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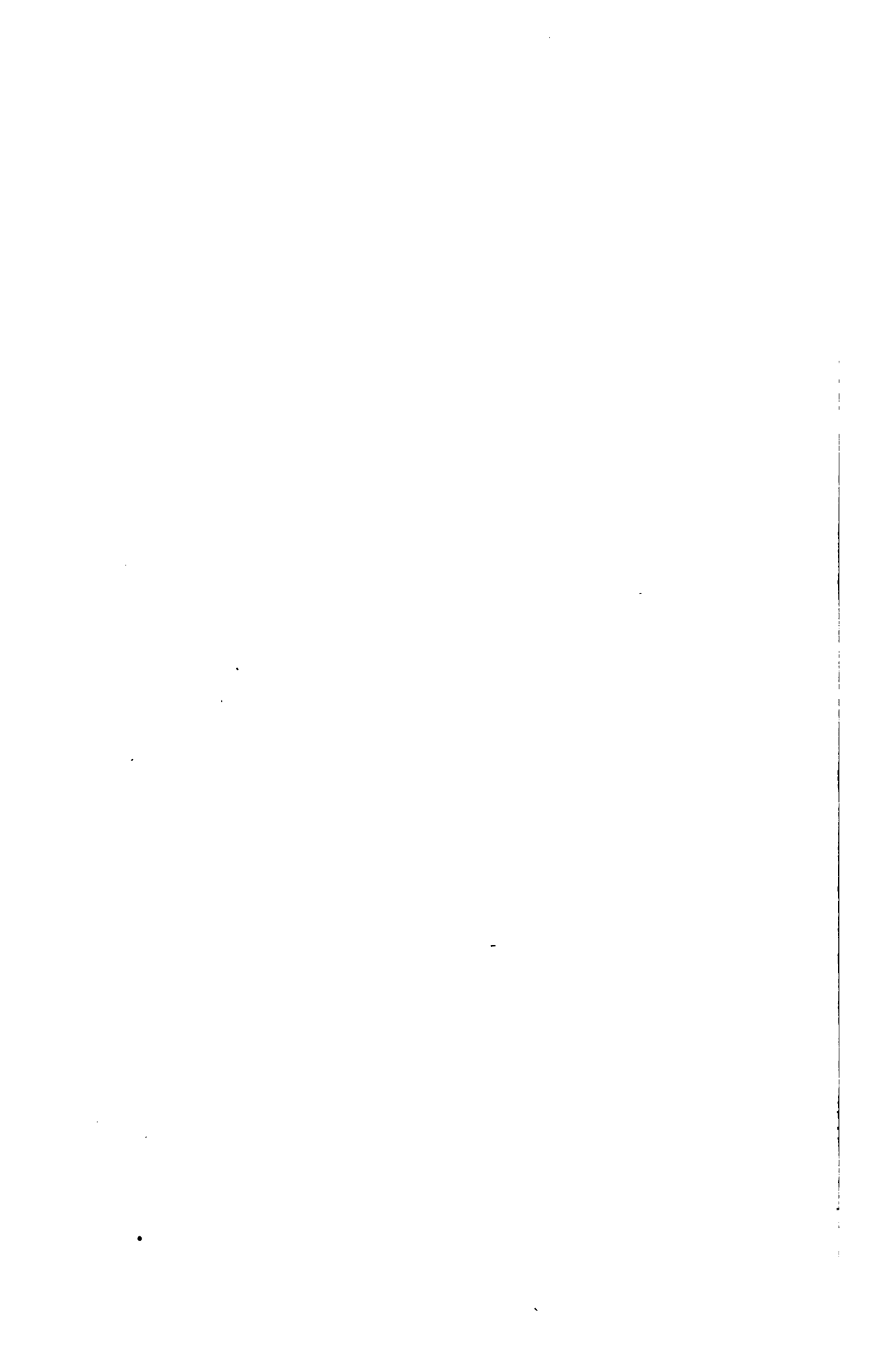
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JEM
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New South Wales, Laws, & Statutes

THE
COMPANIES ACTS

OF 1874 AND 1888.

RULES AND FORMS,

TOGETHER WITH

THE NO-LIABILITY MINING COMPANIES ACT, AND
OTHER ACTS RELATING TO COMPANIES,

WITH

*Notes, References to the English Acts, and to decided cases ;
to which are added chapters on the Formation of a Company, and
on the Practice in Winding-up and Reduction ; also additional
Forms, Bills of Costs, and a copious Index.*

BY

T. BOLIN, M.A., BARRISTER-AT-LAW,

AND

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PREFACE.

THE original plan of this book was simply to collect in a convenient form the statutes in force in New South Wales on the subject of companies, together with the Rules of the Supreme Court dealing with winding-up and the reduction of capital. It was proposed to thoroughly index these statutes and rules, and at the same time, in order to facilitate reference to the English cases, to note under each section of the Acts and each rule the corresponding section and rule in force in England. This plan has been carried out; in addition it has been thought useful to give short notes on the scope of the sections of the various Acts, illustrated by reference to a few of the leading English cases. The latest English cases not contained in the last editions of the numerous English works on the same subject have been noted; and all the cases on this branch of the law decided in our own Courts have been referred to. In addition to the reported cases in our Courts we have had the opportunity, through the kindness of R. J. Browning, Esq., and S. E. Lamb, Esq., barristers-at-law, of looking through numerous unreported cases decided in the years 1874, 1875, and 1876. The bulk of the book has been further increased by the addition of short chapters on the formation of a company, and on the practice in reduction of capital and in winding-up. These chapters on the practice, the latter of which has had the great advantage of revision by the Master in Equity, will in particular, it is hoped, be found useful to the legal profession; and in the same view some forty or more forms have been added, together with some bills of costs—the latter prepared with the assistance of the Deputy Registrar in Equity.

In addition to a few statutes, not of great importance, which have been added to complete the collection of statutes connected with the subject, the "No-liability Act" has been printed. In the almost total absence of any express authority, the opinions expressed in the notes on that Act have been advanced with great diffidence, and with the consciousness of the importance of the subject to the very numerous companies now registered under it. We cannot but believe that fresh legislation on this subject would be very advantageous to companies formed or to be formed on the no-liability principle. In connection with this Act a set of rules has been drafted for the use of no-liability companies.

The above short sketch of the scope of this work will show that we have not attempted to provide a substitute for any of the recognised English books dealing with the same subject. The admirable works of Buckley, Lindley, Palmer, and other writers have been freely used and referred to; and our intention is merely to supply a more ready reference from our own Acts to those great authorities. In particular, under many sections of the "Companies Acts," reference has been made to the fifth edition of Buckley's work on the English Companies Acts and the notes therein contained on the corresponding sections of the English Acts.

We desire to express our thanks and great obligations to H. F. Barton, Esq., Master in Equity, for his kindness in revising the chapter on practice in winding-up; and to W. H. Hargraves, Esq., Deputy Registrar in Equity, we are greatly indebted for his careful perusal of the bills of costs in winding-up which are appended.

T. ROLIN.

G. E. RICH.

CHAMBERS,
ELIZABETH STREET,
July, 1890.

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INTRODUCTION.



COMPANIES are either (1) incorporated or (2) unincorporated. Unincorporated companies suffer under many disabilities; they are substantially partnerships, and subject to the incidents of ordinary partnerships. The members are each individually liable for the whole debts of the company; the company can only sue and be sued in the name of the whole of the persons composing it, and is thus debarred from suing or being sued by its own members; and, in the case of a large company, is practically debarred from suing its debtors at all. The members of such a company can indeed provide by their deed of settlement for the transfer of their shares without the assent of the other members, though it was at one time thought that a company with shares so transferable was illegal at common law. Such companies not infrequently obtained statutory powers (without incorporation) to sue and be sued in the name of some officer, many instances of which are to be found in our statute books, especially in the case of companies formed for banking purposes. To ensure that such companies should always fill up any vacancy in the appointment of such officer, the Act 6 Vict. No. 2 (*infra*, p. 338) was passed in 1842 declaring that such companies should lose their privileges if they failed to elect some other person in place of such officer in case of his death, resignation, or removal.

The adjustment of the rights of members at any time or finally could formerly only be accomplished by means of a suit in equity. But in 1847 provision was made for a sort of winding-up of such companies by the Act 11 Vict. No. 19 (repealed by the "Companies Act," s. 249), under which if any incorporated or joint stock company committed an act of insolvency (as defined by the Act), the estate of such company could be sequestrated upon the

petition of any creditor; and a declaration by the board of directors, made in the form prescribed by a schedule to the Act, was declared to be such an act of insolvency as would enable the president or chairman of the company to take the same proceedings for sequestrating the company's estate as an individual might take in relation to his own estate under the insolvency law. At the same time power was given to the Court, after sequestration, to restrain executions against, and to enforce contributions from, individual members. An unincorporated company had no power (as mentioned *supra*) to sue its members, or the members to sue the company; but in 1848 the Act 11 Vict. No. 56 (*infra*, p. 339) was passed, enabling a member of such a company to sue and be sued by the officer of the company appointed under its private Act to sue and be sued generally.

All unincorporated companies (unless otherwise provided by their private Act or charter) were unlimited as regards the liability of their members. But in 1853 the Act 17 Vict. No. 9 (repealed by the "Companies Act," s. 249) was passed, which legalised partnerships with a sort of limited liability. The Act provided that partners might be of two kinds, general and special. The former were responsible to the same extent as general partners are at law; the latter, who had to contribute specific sums in money as capital, were allowed to do so without being held responsible beyond the sum they had so contributed. A certificate containing the names of the partners had to be registered; and if it contained any false statements the special partners became liable for the debts of the company to the same extent as the general partners. The partnership could not be entered into for a longer period than seven years, but might be renewed.

Further, general provision was made for the existence of mining partnerships with limited liability, but without incorporation, by the Act 24 Vict. No. 21 (printed with its amending Acts, *infra*, pp. 325-336). By that Act a shareholder in a company formed under it was to be liable for the debts of the company only to the amount of his shares; under the Amending Act, 34 Vict. No. 16, he is to be liable only to the amount unpaid on his shares.

It thus appears that previously to the "Companies Act" some attempts had been made to lessen the disabilities under which unincorporated companies suffered. From most of these disabilities incorporated companies are free, principally because a corporation has a recognised legal existence as a body separate and distinct from the members composing it. And the Act 11 Vict. No. 19, it may be observed, applied to incorporated as well as unincorporated companies, though without prejudice to their charter of incorporation.

But until the passing of the "Companies Act" incorporation could only be acquired by Royal Charter granted by the Crown, or by the expensive process of procuring a private Act of Parliament. The members of a common law corporation are not individually at all liable to its debts, but the creditors must look to the assets of the corporation itself; and it appears that the Crown had no power to grant a charter of incorporation and at the same time to declare that the persons composing the corporation should be personally liable for its debts. In 1825 an Act, 6 Geo. IV. c. 91, was passed in England to enable the Crown to grant such a charter, but it seems doubtful whether that Act is in force in New South Wales. This entire freedom from personal liability seems an undesirable incident in a company formed for ordinary trading purposes. Moreover, it may be questioned whether the Governor of a colony has power to grant a charter of incorporation; though it appears the better opinion that he has such power: "patents under the great seal" (in the colony of New York) "are as effectual for all the purposes intended by them as if they had been under the great seal of England, being derived from the same authority, viz., the King": *Opinions of Eminent Lawyers*, vol. 1, p. 250.

The object of the "Companies Act" seems to be to provide an easy means of incorporating companies by the simple process of registration by a public officer; and at the same time to make the members of the corporation individually liable for the debts of the company, but, if they so choose, not to an unlimited extent. The Act further provides for the winding-up of all companies, whether registered under it or not.

A limited company under the "Companies Act" thus occupies a middle position between a corporation under royal charter and an unincorporated company. It is distinguished from the former by having members liable individually for its debts; and further by the fact that it is not to all intents regarded as having the full powers of a common law corporation, but only such powers as are conferred by the Act under which it is formed. Compared with a partnership or unincorporated company, its members, though liable, may yet, if they choose, be liable only to a limited extent; and it is regarded as having an existence distinct from that of its members, and thus can sue and be sued by them as freely as another person may.

It may further be observed that the interest of a member of a company under the "Companies Act" (usually in the form of shares) is by s. 20 made transferable; though that general right will be subject to any restrictions imposed by the articles of association of the company. By the same section shares are declared to be personal property; though it has been held that they are not goods, wares, or merchandise so as to fall within the 17th section of the "Statute of Frauds"; they are "things in action" within the meaning of s. 52 (3) of the "Bankruptcy Act, 1887," and so exempt from the order and disposition clause.

THE COMPANIES ACT,

87 VICT. No. 19.

ADDITIONS AND CORRECTIONS.

PAGE.

- 9. In s. 15 and notes D. and E., for "speciality" read "specialty."
- 12. Notes to s. 19, add *Tussaud v. Tussaud*, W.N. (1890) 78.
- 17. Under s. 28 add *In re Perkins, ex p. Mexican Santa Barbara Mining Co.*, 24 Q.B. Div. 613.
- 17. S. 29, note (a), for N.R. 32 B. read L.R. 3 Q.B.
- 20. S. 33, add *Gurney Patent Brick Co. v. Harker*, reported in the Sydney *Daily Telegraph*, 28th June, 1890; (judgment of Owen, Chief Judge in Equity, on issues ordered to be tried as mentioned at p. 272).
- 22. First line, for "part" read "past."
- 39. S. 68, add *Gale v. Wingello Coal Mining Co., Ltd.*, 6 N.S.W. W.N. 136.
- 43. S. 75 in note, after *Re Pyle Works Co.*, add affirmed W.N. (1890) 77.
- 51. S. 92, line 10, after "penalties" omit the semi-colon.
- 55. *Re Trades and Industrial, &c., Association* is now reported 11 N.S.W. L.R. 36.
- 67. In notes to s. 134, add "*Re Building Societies Trust, Ltd.*, W.N. (1890) 68."
- 119. S. 241, for "actions" read "action."
- 132. Art. 22, note, for "Act" read "Art."
- 141. Art. 57, first line, for "directors" read "director."
- 233. Form 74, for "and application" read "an application."
- 245. In note at head of chapter, for "March, 1889," read "1st April, 1889."
- 265. In seventh line from foot of page, for "chairman's" read "chairman."
- 267. In thirteenth line from foot of page, for "R. 42, s. 154," read "R. 42 S. 154."
- 298. S. 17, for "services" read "service."

Sect. 3. unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of a Royal Charter (A), or Letters Patent; and no company, association, or partnership consisting of more than twenty persons shall be formed, after the commencement of this Act, for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act (a) or is formed in pursuance of some other Act of Parliament, or of a Royal Charter (A), or Letters Patent, or is a company (B) formed for mining purposes under or in pursuance of the Act twenty-fourth Victoria number twenty-one. (b)

Exceptions.

Buckley, pp. 1—5.

(A) Eng. Act omits "or of a Royal Charter."
(B) *Id.* reads "or is a company engaged in working mines within and subject to the jurisdiction of the Stannaries."

Object of the Act.

(a) "The object of the Act was that commercial associations or companies consisting of more than twenty persons should be registered": *per* Jessel, M.R., *In re Padstow Association*, 20 Ch. Div. at p. 145. And as to the status of such an association if unregistered see *Waller v. Gipps*, 6 N.S.W. L.R. Eq. 123, where it was decided that such a

company is by law illegal, and has no *locus standi* in Court, and cannot sue in respect of any cause of action; overruling the decision of the then Primary Judge, *ib.* p. 40.

Illegal association.

(b) An "Act to Limit the Liability of Mining Partnerships" (1861), amended by 34 Vict. No. 16 (1871), as to which Acts see *infra*.

Registration.

The provisions of this Act with regard to registration apply (1) to companies formed under it, Parts I.—IV.; (2) to companies existing at the time of the commencement of the Act (s. 224), Part VI.; (3) to companies formed after the commencement (s. 224) but not under the provisions of the Act. A company not registered under the Act may still be wound up under its provisions, Part VII.

Foreign companies.

A foreign company cannot be registered under the "Companies Act," "that Act never contemplated that a foreign partnership, actually complete and existing in a foreign country, could be brought within the purview of the English Act of Parliament, the English Legislature having no power over the shareholders of such a company. The only mode in which they could have done it would have been, not to register themselves as a company, . . . but to have gone through the form of dissolving the company and of forming a new company altogether, which is a totally different thing": *per* James, L.J., *Bulkeley v. Schutz*, L.R., 3 P.C., at p. 769, approved in *Bateman v. Service*, 6 App. Cas. 386, where it was held that a company duly registered and incorporated in Victoria could not be again registered as a company in *Western Australia*, although it could carry on business and make contracts there by its agent, without its members being liable individually for its debts and engagements.

THE COMPANIES ACT.

3

There is no jurisdiction under this Act to wind up a foreign company which has carried on business in this country by means of agents, but which has no branch office of its own here: *In re Lloyd Gen. Italiano*, 29 Ch. D. 219. Sect. 5.

4. This Act is divided into Seven Parts (A), relating to the following subject matters:— Division of Act.
25 & 26 Vict. c.
89, s. 3.

The First Part,—to the constitution and incorporation of companies and associations under this Act:

The Second Part,—to the distribution of the capital and liability of members of companies and associations under this Act:

The Third Part,—to the management and administration of companies and associations under this Act:

The Fourth Part,—to the winding-up of companies and associations under this Act:

The Fifth Part,—to the registration office:

The Sixth Part,—to companies authorised to register under this Act:

The Seventh Part,—to application of this Act to unregistered companies.

(A) Eng. Act Nine Parts; The Sixth and Ninth Parts omitted in N.S.W. Act; as to the Sixth Part, it deals with companies registered under the Joint Stock Companies Acts, and no corresponding Acts were in force in New South Wales; while the Ninth Part dealing with repeal of Acts and temporary provisions was rendered necessary by the existence of the same Acts, and was for the same reason unnecessary here, a single section (s. 249) being sufficient for such purpose.

The different Parts comprise the sections as follows:—

Part I., ss. 5—19.

Part V., s. 222.

Part II., ss. 20—70.

Part VI., ss. 223—242.

Part III., ss. 71—125.

Part VII., ss. 243—248.

Part IV., ss. 126—221.

Sections 249, 250, deal with repeal of Acts; and the last section, 251, deals with the time of commencement of the Act.

PART. I. (ss. 5—19).

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

5. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association (a), and otherwise complying with the requisitions of Mode of
forming com-
pany.
25 & 26 Vict. c.
89, s. 6.

Sect. 6. this Act in respect of registration (b), form an incorporated company with or without limited liability.

Buckley, pp. 6—8.

(a) See forms in Sch. II., *infra*.

(b) ss. 16, 17.

Foreign
business.

A company may be registered here, although its object is to carry on business outside New South Wales: *semble*, see *Princess of Reuss v. Bos*, L.R. 5 H.L. 176.

Signature by
agent.

The memorandum may be signed by agent: *In re Whitley Partners, Limited*, 32 Ch. Div. 337.

Mode of
limiting
liability of
members.
25 & 26 Vict. c.
89, s. 7.

6. The liability of the members (a) of a company formed under this Act may, according to the memorandum of association, be limited either to the amount (if any) unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

Buckley, pp. 8, 9.

(a) Defined by s. 21.

Members.

The liability of members is controlled by the memorandum of association and not by the articles of association: *Dent's Case*, 8 Ch., at p. 775; though the latter may extend the liability of shareholders in certain cases, as, for the adjustment of the rights of the shareholders *inter se*: *McKewan's Case*, 6 Ch. Div. 447.

Directors.

The liability of directors may be unlimited, ss. 37—41.

Memorandum
of association of
a company
limited by
shares.
25 & 26 Vict. c.
89, s. 8.

7. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association (a) shall contain the following things: (that is to say,)—

- (1) The name of the proposed company, with the addition of the word "limited" (b) as the last word in such name:
- (2) The place in New South Wales (A) in which the registered office of the company is proposed to be situate:
- (3) The objects for which the proposed company is to be established:
- (4) A declaration that the liability of the members is limited]:

- (5) The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount : Sect. 8.

Subject to the following regulations :—

- (1) That no subscriber shall take less than one share :
- (2) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Buckley, p. 9.

(A) Eng. Act reads—"The part of Scotland, or Ireland," the United Kingdom, whether England,

(a) Sch. II., Form A, *infra*.

(b) But as to companies not formed for purposes of gain, see s. 54.

8. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee (a), the memorandum of association (b) shall contain the following things: (that is to say,)—

Memorandum of association of a company limited by guarantee.
25 & 26 Vict. c. 89, s. 9.

- (1) The name of the proposed company, with the addition of the word "limited" as the last word in such name :
- (2) The place in New South Wales (A) in which the registered office of the company is proposed to be situate :
- (3) The objects for which the proposed company is to be established :
- (4) A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding-up the company, and for the adjustment of the rights of the

Sect. 9.

contributories amongst themselves, such amount as may be required, not exceeding a specified amount (c).

Buckley, pp. 9—11.

(A) Eng. Act reads—"The part of Scotland, or Ireland." the United Kingdom, whether England,

(a) The capital may or may not be divided into shares (ss. 13, 143, 185). (c) And as to such companies having a capital divided into shares, see s. 13.
(b) Sch. II., Forms B. C., *infra*.

Memorandum of association of an unlimited company.
25 & 26 Vict. c. 89, s. 10.

9. Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association (a) shall contain the following things: (that is to say,)—

- (1) The name of the proposed company:
- (2) The place in New South Wales (A) in which the registered office of the company is proposed to be situate:
- (3) The objects for which the proposed company is to be established (b).

(A) Eng. Act reads—"Part of the Scotland, or Ireland." United Kingdom, whether England,

(a) Sch. II., Form D., *infra*. See note to Eng. Act, s. 9, Buckley, pp. 10, 11.
(b) And as to such companies having a capital divided into shares, see s. 13.

Signature and effect of memorandum of association.
25 & 26 Vict. c. 89, s. 11.

10. The memorandum of association (A) shall be signed by each subscriber in the presence of, and be attested by, one witness at the least (B). It shall, when registered, bind the company and the members thereof to the same extent as if each member (a) had subscribed his name and affixed his seal thereto, and as if (c) there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

Buckley, pp. 11, 12.

(A) Eng. Act inserts here—"shall attest" shall be a sufficient attestation in Scotland as well as in England and Ireland."

(B) Eng. Act inserts here—"and that (c) Eng. Act omits "as if."

(a) Defined by s. 21. As to the effect of the articles of association, see s. 15.

The memorandum of association must be stamped with a shilling stamp as an agreement under the "Stamp Duties Act, 1880."

Power of certain companies to alter memorandum of association.

11. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if

authorised to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned (a) as to increase its capital (b) by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock (c), but, save as aforesaid, and save as is hereinafter provided in the case of a change of name (d), no alteration shall be made by any company in the conditions contained in its memorandum of association (e).

Sect. 12.

25 & 26 Vict. c. 89, s. 12.

Buckley, pp. 12—17.

- (a) ss. 82, 83.
 (b) s. 32, Sch. I., Table A. (26)—(28).
 (c) ss. 26, 27, Sch. I., Table A. (23)—(25).
 (d) ss. 12—19.
 (e) But as to alterations in the articles, see ss. 82, 240. And by s. 41 the memorandum of association may be altered so as to make the liability of directors unlimited. By ss. 42—51 the conditions in the memorandum of association of a company limited by shares may be modified so as to reduce its capital; and by s. 52 shares may be divided into shares of smaller amount. These provisions were not contained in the English "Companies Act, 1862," but are found in the Amending Act of 1867, 30 & 31 Vict. c. 131, ss. 8, 9—20 & 21.

In *Sparke v. Blanton*, 7 N.S.W. L.R. Eq. 39, it was decided that the word "stock" in a vesting order includes "shares."

The section confers power on a company limited by shares to alter its memorandum of association in certain respects; but except as empowered by this section and the other sections referred to in note (e), the memorandum is unalterable. "The memorandum of association is, as it were, the charter, and defines the limitation of the powers of a company to be established under the Act": *Per Cairns, L.C., Ashbury Co. v. Riche*, L.R. 7 H.L. 653, at p. 668. And articles of association professing to confer authority to modify the memorandum beyond the limited extent allowed by the Act, are wholly void; and a contract outside the provisions of the memorandum is wholly void and cannot be ratified: *S.C.*, and see on this subject the judgments generally in that case.

Articles cannot extend memorandum.
 Contract when ultra vires.

12. Any company under this Act, with the sanction of a special resolution of the company passed in manner hereinafter mentioned (a), and with the approval of the Governor with the advice of the Executive Council testified in writing under the hand of the Clerk of the Council (A), may change its name (b), and upon such change being made the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company,

Power of companies to change name.
 25 & 26 Vict. c. 89, s. 13.

Sect. 13. and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Buckley, p. 17.

(A) Eng. Act reads — “with the in writing under the hand of one of its approval of the Board of Trade testified secretaries or assistant secretaries.”

(a) s. 83.

(b) And see s. 19.

The change does not take effect until the Registrar's certificate has been issued : *Shackelford, Ford & Co. v. Dangerfield*, L.R. 3 C.P. 407.

Articles of Association (a).

Regulations to be prescribed by articles of association.
25 & 26 Vict. c. 89, s. 14.

13. The memorandum of association may, in the case of a company limited by shares, and shall in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient: The articles shall be expressed in separate paragraphs, numbered arithmetically: They may adopt all or any of the provisions contained in the table marked A in the First Schedule hereto: They shall in the case of a company whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered (b); and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members (c) with which the company proposes to be registered for the purpose of enabling the Registrar to determine the fees payable on registration (d): In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes (e).

(a) As to alterations in these, see s. 82.

(b) Sch. II., Forms C. D.

(c) Notice of any increase in the number of members must be given to the Registrar under s. 32.

(d) Sch. II., Form B: as to fees, see Sch. I., Tables B. C.

(e) See ss. 7, 8, 9. But in Sch. II.,

Forms C. D., the number of shares is set out in the articles, and not in the memorandum; it is suggested in Buckley, p. 10, that “memorandum” is here inadvertently inserted for “articles.” By s. 85, a copy of any special resolution is to be forwarded to the Registrar, and is to be annexed to the articles, s. 86.

14. In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the Table marked A in the First Schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

Sect. 16.

Application of
Table A
25 & 26 Vict. c.
89, s. 15.

By s. 240 (I.), Table A does not apply to any company registered under the Act in pursuance of Part VI., unless adopted by special resolution.

The Governor, with the advice of the Executive Council, may alter Table A., s. 101; but no alterations have been made. See note to that section.

15. The articles of the (A) association shall be printed (B) and shall be signed by each subscriber, in the presence of, and be attested by, one witness at the least (C). When registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles subject to the provisions of this Act (a); and all moneys payable by any member of the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a speciality (D) debt due from such member to the company (E) (b).

Signature and
effect of articles
of association.
25 & 26 Vict. c.
89, s. 16.

(A) Eng. Act reads — "Articles of association." in Scotland as well as in England and Ireland."

(B) *Id.* inserts—"They shall bear the same stamp as if they were contained in a deed."

(C) Eng. Act inserts here—"And such attestation shall be a sufficient attestation

(D) Eng. Act omits "speciality."

(E) *Id.* adds—"And in England and Ireland to be in the nature of a speciality debt."

(a) See s. 10, and note to Eng. sec. 11, Buckley, p. 112.

(b) See also s. 127, and Sch. I., Table A. (4)—(7).

The articles of association must be stamped with a shilling stamp as an agreement under the "Stamp Duties Act, 1880."

General Provisions.

16. The memorandum of association and the articles of association, (if any), shall be delivered to the Registrar of Joint Stock Companies hereinafter (a) mentioned, and called the Registrar (A),

Registration of
memorandum of
association and
articles of
association.

Sect. 17. who shall retain and register the same : There shall be paid to the Registrar by a company having a capital divided into shares in respect of the several matters mentioned in the Table marked B. in the First Schedule hereto, the several fees therein specified, or such smaller fees as the Governor with the advice of the Executive Council (a) may from time to time (b) direct ; and by a company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C. in the first Schedule hereto, the several fees therein specified, or such smaller fees as the Governor with the advice aforesaid (a) may from time to time (b) direct (c).

25 & 26 Vict. c.
89, s. 17.

Fees.

(A) Eng. Act omits—" and called the Registrar."

(B) *Id.* reads—" Board of Trade."

(a) s. 222.

(c) *Id.* adds directions for the payment of these fees by the Registrar to Her Majesty's Exchequer.

(b) s. 101.

No alteration in the scale of fees has been made ; see note to s. 101.

Effect of registration.
25 & 26 Vict. c.
89, s. 18.

17. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited : The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company (a), shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands (b), and to sue and be sued in all Courts in the Colony (A), but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned (c) : A certificate of the incorporation of any company, given by the Registrar, shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with (d).

Buckley, pp. 19—22.

(A) Eng. Act omits words "and to sue," &c.

- (a) s. 21. (d) And as to companies registered **Sect. 19.**
 (b) But see s. 55 as to associations under Part VI., see s. 236; and as to
 not for profit. copies of certificates, see the "Com-
 (c) s. 36. panies Act, 1888," s. 6 *infra*.

The certificate of the Registrar is conclusive evidence of the incorporation, **Certificate.**
 and there is no way of getting rid of its effect: *Princess of Reuss v. Bos*, L.R.
 5 H.L. 176.

The company may begin business before the whole of the shares are allotted **Commencement**
 as seems, *e.g.*, to be contemplated in s. 88 (2); though shareholders may protect of business.
 themselves against this by provisions in the articles of association, which will
 be good as between themselves, and even as against third persons: *Pierce v.*
Jersey Waterworks Co., Ltd., L.R. 5 Ex. 209 : or if, as is commonly the case in
 New South Wales, the company is not in existence at the time of application
 for shares, but application is made to provisional directors, such application
 might be made conditional on a certain number, or the whole, of the shares
 being taken up: see *De Kantsov v. Inglis*, 10 N.S.W. L.R. 297.

18. A copy of the memorandum of association, having annexed **Copies of**
 thereto the articles of association, (if any), shall be forwarded to memorandum
 every member, at his request, on payment of the sum of one and articles to
 shilling, or such less sum as may be prescribed by the company be given to
 for each copy; and if any company makes default in forwarding members.
 a copy of the memorandum of association and articles of 25 & 26 Vict. c.
 association, (if any), to a member, in pursuance of this section, 89, s. 19.
 the company so making default shall for each offence incur a
 penalty not exceeding one pound (a).

(a) As to recovery of penalties, see s. 97, and note thereto.

19. No company shall be registered under a name identical **Prohibition**
 with that by which a subsisting company is already registered, against identity
 or so nearly resembling the same as to be calculated to deceive, of name in
 except in a case where such subsisting company is in the course company.
 of being dissolved, and testifies its consent in such manner as 25 & 26 Vict. c.
 the Registrar requires; and if any company, through inadvertence 89, s. 20.
 or otherwise, is, without such consent as aforesaid, registered by
 a name identical with that by which a subsisting company is
 registered, or so nearly resembling the same as to be calculated
 to deceive, such first-mentioned company may, with the sanction
 of the Registrar, change its name (a), and upon such change
 being made the Registrar shall enter the new name on the
 register in the place of the former name, and shall issue a
 certificate of incorporation altered to meet the circumstances of
 the case; but no such alteration of name shall affect any rights

Sect. 20. or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Buckley, pp. 22, 23.

(a) See s. 12.

Remedy under section.

The section deals with two cases of similarity or identity of name; first, it forbids the registration of a company in a name similar to or identical with that of a subsisting registered company, with the exception mentioned; second, it provides means by which, where such registration has taken place, the name of the last registered company may be changed. These are the only cases coming under the section; but under the general law, a company may be restrained from registering, or after registration from trading, in a name similar to or identical with that of any other registered or unregistered company or firm, when the business proposed to be carried on is the same as that previously carried on by the company or firm complaining, and the name is calculated to deceive. See *Hendriks v. Montagu*, 17 Ch. Div. 638; *Merchant Banking Co. of London v. Merchants' Joint Stock Bank*, 9 Ch. D. 560; and *General Reversionary Investment Co. v. General Reversionary Co., Ltd.*, 1 Megone's Companies Cases, 65 (1888).

By the general law.

PART II. (ss. 20—70.)

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of Capital.

Nature of interest in company.
25 & 26 Vict. c. 50, s. 22.

20. The shares or other interest of any member in a company under this Act shall be personal estate capable of being transferred in manner provided by the regulations of the company (a), and shall not be of the nature of real estate, and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number (b).

Buckley, pp. 24—42.

(a) Sch. I., Table A. (8)—(16).

(b) See notes to Table A. (8), Buckley, pp. 429—433.

Right of transfer.

A shareholder may in general transfer his shares to anyone competent to hold shares; and directors cannot refuse to register a transfer merely because it is made to escape liability, provided it is *bonâ fide* and out and out: *Weston's Case*, 4 Ch. 20; and see *In re Cawley & Co.*, 42 Ch. Div. 209. And misstatements in the

transfer, as of the address of the transferee, do not affect the validity of the transfer, except in so far as they may be evidence of fraud. The general right of transfer may, however, be controlled by the provisions of the articles of association, as by vesting in the directors a discretion to accept a transferee; and in such case wilful concealment or misstatement of fact will be material evidence of fraud and *mala fides*. Buckley, *ubi sup*. Sect. 21.

But until there has been a valid transfer, the shareholder upon the register remains liable as a member of the company. "In order to escape liability" (in a winding-up), "in respect of shares in respect of which he has at any time been the registered holder, it is incumbent upon the holder to show that at some time or other there was a transferee of his upon the register who could be made liable at law in respect of these shares": *Per Giffard, V.C., Curtis' Case*, 6 Eq. 459. Although this must be taken to mean, subject to any right the registered holder may possess, to have the register rectified under s. 33 or s. 157. Fact of transfer.

Where shares had been sold on the London Stock Exchange, and the purchase-money paid by the transferee to the vendor on his handing over a duly executed transfer, but the directors refused to accept the transferee as a shareholder; held, in an action to recover the money paid, that the contract did not import an undertaking by the vendor that the company would register the transferee: *London Founders' Association v. Clarke*, 20 Q.B. Div. 576. Contract of vendor of shares.

The registered holder of shares has a right of action against his transferee to recover calls paid by him in respect of such shares, although the transferee may have parted with the shares before such calls were payable, and the transferee has in turn the same right of action against his transferee: *Thompson v. Dawnt*, 10 N.S.W. L.R. 132. Contract of purchaser of shares.

21. The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned (a); and every other person who has agreed to become a member of a company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company. Definition of "members." 25 & 26 Vict. c. 89, s. 23.

Buckley, pp. 42—78.

(a) s. 23.

The basis of membership in a company is by the section declared to be agreement to become a member; in one particular case the section enacts that the doing of a certain act, namely, subscribing the memorandum, shall constitute such an agreement; in other cases the existence of an agreement will be determined by the rules of law applicable to all questions of contract. As to the persons subscribing the memorandum, the section further enacts that they shall be entered upon the register; but as to the other class, it is made a condition precedent to their being deemed members, that their names shall be put upon the register. The register is therefore *prima facie* evidence on the question of membership, and is expressly made so by s. 35; but it may be Agreement basis of membership.

Register.

Sect. 22. rectified before (s. 33) or after (s. 157) winding-up, in a proper case for rectification.

Signer of memorandum.

A person signing the memorandum of association agrees to become a shareholder, and as long as there are shares that can be allotted to him, he must fulfil that obligation and take shares from the company. See *Drummond's Case*, 4 Ch. 772. And, *semble*, under s. 7, if no number of shares is written opposite the name of the subscriber he agrees to take one share at least.

Allotment.

"Placing" shares.
"Under-writing" shares.

As to the numerous cases falling under the second head, of agreement to take shares, see Buckley, *ubi sup.* There must be a complete agreement, express or implied; the ordinary case is agreement by letter of application, followed by notice of allotment; it is sufficient if the letter of allotment be posted, though it is never received: *Household Fire Insurance Co. v. Grant*, 4 Ex. Div. 216, 218, 228. An agreement to "place" shares is not an agreement to take them: *Gorriessen's Case*, 8 Ch. 507. But an agreement to underwrite shares is an agreement to take such part of the shares as the public has not applied for: *In re Licensed Victuallers' Association*, *e.p. Audain*, 42 Ch. Div. 1.

And under this section see the late cases of *In re Wheal Buller Consols*, 38 Ch. Div. 42; *In re Homer District Consolidated Gold Mines*, *e.p. Smith*, 39 Ch. D. 546; and in N.S.W., *In re Ethel Tin Mining Co.*, *Wesley's and Fergusson's Cases*, 3 N.S.W. W.N. 85.

Transfer by personal representative.
25 & 26 Vict. c. 89, s. 24.

22. Any transfer of the share or other interest of a deceased member of a company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer (a).

Buckley, p. 78.

(a) And see s. 128 and Sch. I., Table of executors and administrators. A., art. (12), as to rights and liabilities

Register of members.
25 & 26 Vict. c. 89, s. 25.

23. Every company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars (a):—

- (1) The names and addresses, and the occupations (if any) of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number: and of (A) the amount paid or agreed to be considered as paid on the shares of each member:
- (2) The date at which the name of any person was entered in the register as a member:
- (3) The date at which any person ceased to be a member:

And any company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues, and every director or manager of the company who shall knowingly and wilfully authorise or permit such contravention shall incur the like penalty. **Sect. 24.**

Buckley, pp. 78, 79.

(A) Eng. Act reads—"And the amount."

(a) See ss. 27—63.

And see the "Companies Extra Colonial Registers Act of 1884," *infra*.

24. Every company under this Act, and having a capital divided into shares (a) shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting (b), or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the company: and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars (c):—

Annual list of members.
25 & 26 Vict. c. 89, s. 26.

- (1) The amount of the capital of the company, and the number of shares into which it is divided:
- (2) The number of shares taken from the commencement of the company up to the date of the summary:
- (3) The amount of calls made on each share:
- (4) The total amount of calls received:
- (5) The total amount of calls unpaid:
- (6) The total amount of shares forfeited:
- (7) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary (d) shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the Registrar of Joint Stock Companies.

Buckley, pp. 79, 80.

Sect. 25.

- (a) See s. 77 as to other companies. into stock, see s. 27 for the particulars required; and where share warrants are issued, see s. 64.
 (b) Which must be held in each year, s. 81.
 (c) But where capital is converted (d) Sch. II., Form E.

As to this list and summary, see *In re Briton Medical and General Life Association*, 89 Ch. D. 61, where it was held that according to the true construction of this section, the forwarding to the Registrar of a list of members and summary which upon the face of them purport to satisfy the requirements of the Act, is not a sufficient compliance with the section unless such list and summary are in accordance with the facts; and a magistrate has jurisdiction upon a summons for penalties under s. 25 to inquire into the truth or falsehood of the statements contained in the list and summary so forwarded, and is not precluded from hearing evidence on the complaint brought before him merely by the circumstance that the list and summary are in accordance with the company's register.

Penalty on company not keeping a proper register.
 25 & 26 Vict. c. 89, s. 27.

25. If any company under this Act, and having a capital divided into shares, makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

See note to s. 24.

Company to give notice of consolidation or of conversion of capital into stock.
 25 & 26 Vict. c. 89, s. 28.

26. Every company under this Act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock (a), shall give notice to the Registrar of Joint Stock Companies of such consolidation, division, or conversion, specifying the shares so consolidated, divided, or converted.

(a) s. 11; Sch. I., Table A. (23)—(25).

Effect of conversion of shares into stock.
 25 & 26 Vict. c. 89, s. 29.

27. Where any company under this Act, and having a capital divided into shares, has converted any portion of its capital into stock (a), and given notice of such conversion to the Registrar (b), all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company (c), and the list of members to be forwarded to the Registrar (d), shall show the amount of stock held by each

member in the list instead of the amount of shares and the Sect. 29.
particulars relating to shares hereinbefore required.

(a) s. 11 ; Sch. I., Table A. (23)—(25) (c) s. 23.
(b) s. 26. (d) s. 24.

28. No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies registered under this Act (A). No entry of trusts on register. 25 & 26 Vict. c. 89, s. 30.

Buckley, pp. 81—83.

(A) Eng. Act reads—"under this Act and registered in England or Ireland."

The Act itself (s. 128) recognises the representative character of executors, &c.; as to whom, see that section and note to Table A. (12). Notice to company.

Though no notice of any trust is to be entered on the register, yet there is nothing to prohibit such notice being given to the company; and since the case of *Bradford Banking Co. v. Briggs*, 12 App. Cas. 29, it would seem very advisable to give such notice. In that case the articles of association provided that "the company should have a first and permanent lien upon every share for all debts due from the holder thereof." A shareholder deposited his scrip with the bank as security for advances, and the bank gave the company notice of the deposit. It was held that the company could not claim priority over advances made by the bank after such notice, in respect of moneys which became due from the shareholder to the company after such notice; although it was further held that such notice was not a notice of trust under this section.

As between himself and the company, the trustee is the shareholder; and his liability is not limited to the amount of the trust estate: *Muir v. Glasgow Bank*, 4 App. Cas. 337; and see note to Table A. (12).

But in *Bainbridge v. Smith*, 41 Ch. Div. 462, Cotton, L.J., expressed an opinion that a trustee is not a shareholder "in his own right" where a director's qualification clause made it necessary that he should hold shares "in his own right" to give him the qualification; but Lindley, L.J., was of opinion that the expression has gained a practical conventional meaning, namely, that the shareholder holds them in such a way that the company may safely deal with them as his shares. Shareholder in "his own right."

29. A certificate (a), under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified. Certificate of shares or stock. 25 & 26 Vict. c. 89, s. 31.

Buckley, pp. 88—90.

(a) Sch. I., Table A., Art. (2); and see Art. (16). As against the company, the certificate amounts to a statement by the company that the person to whom it is issued is entitled to the shares named in it, and, as between the company and a purchaser without notice, that the shares are paid up to the amount stated in the certificate: *Bahia and San Francisco Railway Co.*, N.R. 32 B. 584; *Burkinshaw v. Nicolls*, 3 App. Cas. 1004. A certificate wrongly issued confers no title, but renders the company liable in damages to anyone taking shares on the faith of it: *Bahia and San Francisco Railway Co.*, *ubi sup.* Effect of certificate.

Sect. 30.

Inspection of
register.
25 & 26 Vict. c.
89, s. 32.

30. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned (a) : Except when closed as hereinafter mentioned (b), it shall, during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe, for each inspection ; and every such member or other person may require a copy of such register, or of (A) any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of sixpence for every hundred words required to be copied : If such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues, and every director and manager of the company who shall knowingly authorise or permit such refusal shall incur the like penalty ; and in addition to the above penalty, any Judge of the Supreme Court sitting in Chambers (B) may by order compel an immediate inspection of the register.

Buckley, pp. 90, 91.

(A) Eng. Act reads—"or any part." or the Vice-Warden of the Stannaries
(B) Eng. Act reads—"as respects in the case of companies subject to his
companies registered in England and jurisdiction."
Ireland any Judge sitting in Chambers

(a) s. 71.

(b) s. 31.

And see the "Companies Extra Colonial Registers Act of 1884," *infra*.

Power to close
register.
25 & 26 Vict. c.
89, s. 32.

31. Any company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

And see the "Companies Extra Colonial Registers Act of 1884," *infra*.

Notice of
increase of
capital and of
members to be
given to the
Registrar.

32. Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase (a), in such capital beyond the

registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number shall be given to the Registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorised, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the Registrar shall forthwith record the amount of such increase of capital or members : If such notice is not given within the period aforesaid the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Sect. 33.

25 & 26 Vict. c.
89, s. 34.

(a) s. 11; Sch. I., Table A. (26)—(28).

33. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this Act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may by motion in the Supreme Court (A), either in its common law or in its equitable jurisdiction, or by application to a Judge thereof sitting in Chambers, or in such other manner as the Court may direct, apply for an order of the Court or Judge that the register may be rectified, and the Court or Judge may either refuse such application, with or without costs, to be paid by the applicant, or may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such a motion or application and any damages the party aggrieved may have sustained. The Court or Judge may, in any proceeding under this section, decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged

Remedy for im-
proper entry or
omission of
entry in
register.
25 & 26 Vict. c.
89, s. 35.

Sect. 33. members, or between any members or alleged members and the company, and generally the Court or Judge may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register ; Provided that the Court or Judge may direct an issue to be tried in the said Court on the trial of which any question of law may be raised for the decision of the Court (A).

Buckley, pp. 92—133.

(A) The English section enacts what shall be the tribunal in the Stannaries and in Scotland ; and directed an issue to be tried on which an appeal would lie in manner directed by the "Common Law Procedure Act, 1854," (this part of the section is since repealed) ; but otherwise the section is identical.

Jurisdiction.

The section provides a summary means of procuring the rectification of the register ; and the Court in its discretion will usually exercise the powers conferred by this section, except in a case where there are complicated or difficult questions of fact or law involved, when the parties may be left to bring action or suit to determine their rights ; and see *Werner's Case*, W.N. (1888) 126, where it was held that the section gives the Court an unlimited jurisdiction as to the rectification of the register. The jurisdiction arises in two cases only : (1), where the name of a person is entered in or omitted from the register without sufficient cause ; (2), where there has been default or delay in entering the fact of any person having ceased to be a member of the company, upon the register.

Misrepresentation.

Under the first head comes all the class of cases where a man has been induced by misrepresentation of the company or its agents to become a shareholder ; if, upon his discovering the misrepresentation, the shareholder comes to the Court, without delay, he may have his contract rescinded and his name removed from the register. But if the rights of third parties intervene, as if the company be in course of being wound-up, he is too late and cannot have rescission. See on the question of misrepresentation, in addition to the cases cited in Buckley, *ubi sup.*, *In re New Brighton Recreation Ground Co.*, 10 N.S.W. L.R. Eq. 66.

Default or delay.

As to the second head, "default or delay" means on the part of the company. "If a man being a shareholder has sold his shares, he is not relieved from being a contributory, if, owing either to his own neglect or that of his transferee, or if, in fact, owing to any cause, except the neglect of the company, his transferee's name is not substituted for his at the date of the winding-up:" *per Giffard, V.C., Marshall v. Glamorgan Co.*, 7 Eq. at p. 137.

The jurisdiction was exercised in New South Wales, and damages awarded against the company : *In re New South Wales and Q. Smelting Co.*, 3 N.S.W. W.N. 99. As to rate of interest allowed by way of special damage on rescission of contract to take shares, see *In re Metropolitan Coal Association, s.p. Wainwright*, W.N. (1890) 3.

Register, how rectified.

The register should be rectified in the case of the removal of a name by striking through the name with pen and ink, adding "By order of the Court, dated, &c., this name has been erased:" *Iron Ship Building Co.*, 34 Beav. 597.

Apart from the section and his remedy by rescission, a shareholder has a remedy for damages against a director or other person who by false statements in a prospectus or elsewhere has induced him to take shares; but in order to render the defendant liable in such an action, actual fraud must be proved: see *Derry v. Peak*, 14 App. Cas. 837, reversing the decision of the Court of Appeal, 87 Ch. Div. 541. And see *Armison v. Smith*, 41 Ch. Div. 348; and *Glasier v. Rolls*, 42 Ch. Div. 436.

And where a prospectus contained a statement that the company would start with a credit of £4000 less certain charges, and was afterwards registered when only £900 was subscribed, a shareholder who had paid a deposit on application, and afterwards, in ignorance of the fact that only the smaller amount had been subscribed, paid a call, was held entitled, on discovering the facts (and the company having proved a failure), to recover the amounts so paid from the provisional directors personally, if not as on a contract the consideration for which had failed, at any rate as damages for breach of contract: *De Kantzow v. Inglis*, 10 N.S.W. L.R. 297.

34. Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the Registrar, the Court or Judge (A) shall (B) direct that due notice of such rectification be given to the Registrar.

Notice to Registrar of rectification of register.
25 & 26 Vict. c. 89, s. 36.

(A) Eng. Act omits "or Judge."

(B) *Id.* inserts "by its order."

35. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein (a).

Register to be evidence.
25 & 26 Vict. c. 89, s. 37.

(a) For these matters see s. 23.

Liability of Members.

36. In the event of a company formed (a) under this Act being wound up, every present and past member (b) of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves (c), with the qualifications following: (that is to say,)—

Liability of present and past members of company.
25 & 26 Vict. c. 89, s. 38.

- (1) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up (d):

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- (2) No part member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member:
- (3) No past member shall be liable to contribute to the assets of the company unless it appears to the Court or other authority in, by, or under which the company is being wound (A) up, that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:
- (4) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member:
- (5) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association (e).
- (6) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract:
- (7) No sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories amongst themselves (f).

Buckley, pp. 182—149.

(A) Eng. Act omits "or other authority—wound up."

(a) And also companies registering under Part VI. See s. 240.

(c) s. 167.

(d) ss. 137—181.

(b) Who is a member is defined by s. 1.

(e) ss. 8, 143, 185.

(f) see s. 160, Table A. (73).

Compare with this section, s. 161.

The persons liable to contribute to the assets of a company in the case of a winding-up, are by s. 126 called contributories. By this section all the past and present members of the company, except those who have ceased to be members for more than a year before the winding-up, are liable to become contributories. Whether a person is, or is not, a contributory, depends, therefore, in the first place, on the question whether he is, or has been, a member; and in settling the list under s. 157, the Court will first determine that question having regard to the definition of a member under s. 21, and to the claims any person may have to be put on or left off the register in accordance with s. 38. Next, in the case of a company limited by shares, the question arises, is there anything unpaid on the shares in respect of which a member is registered, regard being had to the provisions of s. 57. The present members on whose shares there is some amount unpaid, are then settled first on a list usually called the "A" list. If after the settlement of this list it appear that the assets of the company, together with the contributions which may be received from the contributories on the "A" list, are insufficient to satisfy the liabilities of the company, the Court will settle the contributories in respect of past membership within a year on a list called usually the "B" list. On this list every past member who has been a member within a year is liable to be placed in respect of unpaid shares, though whether he may be called upon to pay anything, depends on the questions whether the holder of his shares on the "A" list has contributed the full amount unpaid on them, and whether there are existing debts contracted before the time he ceased to be a member.

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Contributories.

37. Where after the commencement of this Act a company is formed as a limited company (A) the liability of the directors or managers of such company, or the managing director, may, if so provided by the memorandum of association, be unlimited.

Companies may have directors with unlimited liability.
30 & 31 Vict. c. 131, s. 4.

(A) Eng. Act act adds—"Under the Principal Act."

This and the following sections down to s. 70 are taken from the English "Amending Act of 1867."

38. The following modifications shall be made in the thirty-sixth (A) section (B) with respect to the contributions to be required in the event of the winding-up of a limited company (C), from any director or manager whose liability is (D) unlimited :—

Liability of director, past and present, where liability is unlimited.
30 & 31 Vict. c. 131, s. 5.

- (1) Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited company :

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- (2) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company :
- (3) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company :
- (4) Subject to the provisions contained in the regulations of the company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution in order to satisfy the debt and liability (E) of the company, and the costs, charges, and expenses of the winding-up.

(A) Eng. Act reads—"thirty-eighth." (D) *Id.* inserts—"in pursuance of this
 (B) *Id.* adds—"of the Principal Act." Act."
 (C) *Id.* adds—"under the Principal (E) *Id.* reads—"debts and liabilities."
 Act."

Director with unlimited liability may have set-off as under section 160. 30 & 31 Vict. c. 131, s. 6.

39. In the event of the winding-up of any limited company, the Court, if it think fit, may make to any director or manager of such company whose liability is unlimited the same allowance by way of set-off as under the one hundred and sixtieth section of this Act (A) it may make to a contributory where the company is not limited.

(A) Eng. Act reads—"one hundred and first section of the Principal Act."

Notice to be given to director on his election that his liability will be unlimited. 30 & 31 Vict. c. 131, s. 7.

40. In any limited company in which (A) the liability of a director or manager is unlimited, the director or manager (B) of the company (if any) and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited, and the promoters, directors, managers, and secretary (if any) of such company, or one of them, shall

before such person accepts such office or acts therein, give him Sect. 42. notice in writing that his liability will be unlimited.

If any director, manager, or proposer make default in adding such statement, or if any promoter, director, manager, or secretary make default in giving such notice, he shall be liable to a penalty not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from such default, but the liability of the person elected or appointed shall not be affected by such default.

(A) Eng. Act adds—"in pursuance (B) *Id.* reads—"directors or managers of this Act."

41. Any limited company (A) may, by a special resolution (a) if authorised so to do by its regulations, as originally framed or as altered by special resolution (a) from time to time modify the conditions contained in its memorandum of association (b) so far as to render unlimited the liability of its directors or managers, or of the managing director; and such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution, and any default in this respect shall be deemed to be a default in complying with the provisions of the eighty-sixth section of this Act (B), and shall be punished accordingly.

Existing limited company may, by special resolution, make liability of directors unlimited.
30 & 31 Vict. c. 131, s. 8.

(A) Eng. Act adds — "under the Principal Act, whether formed before or after the commencement of this Act." (B) Eng. Act reads — "fifty-fourth section of the Principal Act."

(a) s. 83.

(b) s. 11.

Reduction of Capital and Shares.

42. Any company limited by shares may, by special resolution (a), so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution (a) as to reduce its capital (b); but no such resolution for reducing the capital of any company shall come into operation until an Order

Power to company to reduce capital.
30 & 31 Vict. c. 131, s. 9.

Sect. 43. of the Court is registered by the Registrar of Joint Stock Companies, as (A) hereinafter mentioned (c).

Buckley, pp. 510—516.

(A) Eng. Act reads—"as is hereinafter mentioned."

(a) s. 83.
(b) s. 11.

(c) s. 47.

And on this head, see RB. 64—82, *infra*.

In the *Ebbw Vale Co.'s Case*, 4 Ch. D. 827, Jessel, M.R., decided that this section did not allow reduction of the paid-up capital of a company, by writing off lost capital, but only by reducing the unpaid liability on a share.

This decision was opposed to previous decisions, and has since been doubted: *Per* Cotton, L.J., in *Bannatyne v. Direct Spanish Telegraph Co.*, 34 Ch. Div. 287. But in consequence of that decision the Eng. "Companies Act, 1877" was passed, and the same Act has been passed in New South Wales as the "Companies Act, 1888," which see, *infra*.

Companies Act,
1888.

By that Act the word "capital," used in this Act, is declared to include paid-up capital; and it is further declared that the power to reduce capital conferred by that Act shall include a power to cancel any lost capital, or any capital unrepresented by available assets or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability on the remaining shares of the company: s. 3. By s. 4, the company is relieved from doing certain matters required by this Act, where the reduction does not involve either the diminution of any liability in respect of unpaid capital, or a return of paid-up capital; and by s. 5 the company may cancel unissued shares, if authorised so to do by its articles.

Under s. 11 a company can increase or consolidate its capital or convert its paid-up shares into stock without a special resolution; but in companies governed by Table A., Art. (23) as to conversion of shares into stock requires, while Art. (26) does not require, a special resolution. Under this section and s. 52, a company may reduce its capital or subdivide its shares only by special resolution.

Purchase of
company's
shares by
company.

A company has no power to buy its own shares, and so reduce its capital: *Trevor v. Whitworth*, 12 App. Cas. 409; and see *per* Stirling, J., in *re Mersina Railway Co.*, 1 Megone's Companies Cases, 341 (1889).

Return of
capital.

A company may return some of its capital to its shareholders, on the footing that the amount so returned might be called up again: *In re Fore Street Warehouse Co.*, W.N. (1888) 155.

A limited company has no power to reduce its capital by reducing some shares and not reducing others: *In re Union Plate Glass Co.*, 42 Ch. D. 513, decided by Kay, J., not following decisions of North, J., in *re Barrow Hematite Steel Co.*, 39 Ch. D. 582, and *In re Quebrada Railway Land and Copper Co.*, 40 Ch. D. 363. Where shares had been illegally issued at a discount, the Court refused to confirm a reduction of capital of the amount of the discount: *In re New Chile Gold Mining Co.*, 38 Ch. D. 475.

Company to add
"and reduced"
to its name for a
limited period.

43. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until

such date as the Court may fix (a) the words "and reduced," as Sect. 45.
the last words in its name, and those words shall, until such date, 30 & 31 Vict. c.
be deemed to be part of the name of the company within the 131, s. 10.
meaning of this Act (A).

Buckley, p. 516, 517.

(A) Eng. Act reads—"the Principal Act."

(a) R. 82.

Under this Act and the Act of 1888 the Court dispensed altogether with the use of the words "and reduced": *In re Hudson Bros. Limited*, *cor. Owen*, Ch. J. Eq., Nov., 1888.

44. A company which has passed a special resolution (a) for reducing its capital may apply to the Court by petition (b) for an order confirming the reduction, and on the hearing (c) of the petition the Court, if satisfied that with respect to every creditor of the company who under the provision (*sic*) of this Act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided (d), may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Company to apply to the Court for an Order confirming reduction. 30 & 31 Vict. c. 131, s. 11.

Buckley, p. 517.

(a) s. 83.

(b) RR. 64—82.

(c) RR. 78—81, as to proceedings in reduction of capital.

(d) s. 46.

The power given to the Court by this section is a discretionary power: *In re Direct Spanish Telegraph Co.*, 34 Ch. D. 307.

45. Where a company proposes to reduce its capital, every creditor of the company who at the date fixed by the Court (a), is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof, against the company (b), shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

Creditors may object to reduction, and list of objecting creditors to be settled by the Court. 30 & 31 Vict. c. 131, s. 13.

The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the

Sect. 46. company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction (c).

Buckley, pp. 517, 518.

(a) R. 66.

(b) s. 209.

(c) R.R. 68—81.

Court may dispense with consent of creditor on security being given for the defendant (A).
30 & 31 Vict. c. 131, s. 14.

46. Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it think fit), dispense with such consent, on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as hereinafter mentioned (that is to say),—

- (1.) If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated :
- (2.) If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may (if it think fit), inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated (a).

Buckley, pp. 518, 519.

(A) *Sic* ; Eng. Act, marginal note reads—" his debt."

(a) R. 81.

Consent.

Every creditor must consent or be secured. It was held that creditors who had neither assented to nor dissented from the proposed reduction, must be deemed to assent : *In re Credit Foncier of England*, 11 Eq. 356 ; not followed by Fry, J., in *Re Patent Ventilating Granary Co.*, 12 Ch. D. 254, who held that debenture holders who had not consented in writing to a proposed reduction, and had not attended in Chambers to object, and did not appear in Court on the hearing of the petition, could not be taken to have consented to the proposed reduction, but that a consent brief on their behalf must be produced, or the amount of their debentures must be deposited in Court.

47. The Registrar of Joint Stock Companies, upon the **Sect. 48.**
production to him of an order of the Court confirming the
reduction of the capital of a company, and the delivery to him of
a copy of the order and of a minute (approved by the Court)
showing with respect to the capital of the company, as altered
by the order, the amount of such capital, the number of shares
in which it is to be divided, and the amount of each share, shall
register the order and minute, and on the registration the special
registration (A) confirmed by the order so registered shall take
effect.

Order and
minute to be
registered.
80 & 31 Vict.
131, s. 15.

Notice of such registration shall be published in such
manner as the Court may direct (a).

The Registrar shall certify under his hand the registration
of the order and minute, and his certificate shall be
conclusive evidence that all the requisitions of this Act
with respect to the reduction of capital have been
complied with, and that the capital of the company is
such as is stated in the minute.

Buckley, pp. 519—521.

(A) *Sic* ; evidently for " resolution."

(a) R. 82.

Under the Rules three advertisements are required, viz. :—

(1) Advertisement of the presentation of the petition (R. 67, Form No. 57).

(2) Advertisement of the list of creditors (R. 72, Form No. 60).

(3) Advertisement of the hearing of the petition (R. 78, Form No. 63).

Under this sect. a further notice is required by the statute, viz. :—

(4) Notice of the registration of the order and of the minute, see also R. 82 ;
the Court cannot dispense with this publication : *per* Chitty, J., in *London
Steamboat Co.*, 31 W.R. 781 ; W.N. (1883) 123.

And see s. 4, " Companies Act, 1888," *infra*. Notice of the list of creditors
and advertisement thereof was dispensed with by Owen, Ch.J. Eq., in *In re
Hudson Bros., Ltd.*, Nov., 1888, a case under s. 4 of the Act of 1888.

48. The minute when registered shall be deemed to be
substituted for the corresponding part of the memorandum of
association of the company, and shall be of the same validity and
subject to the same alteration (A) as if it had been originally
contained in the memorandum of association ; and, subject as in
this Act mentioned, no member of the company, whether past or
present, shall be liable in respect of any share to any call or

Minute to form
part of memo-
randum of
association.
80 & 31 Vict. c.
131, s. 16.

Sect. 49. contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

(A) Eng. Act reads—"alterations."

*Saving of rights
of creditors who
are ignorant of
proceedings.
30 & 31 Vict. c.
131, s. 17.*

49. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of the one hundred and thirty-second section of this Act (A) to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and on the company being wound up the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

(A) Eng. Act reads—"eightieth section of the Principal Act."

*Copy of regis-
tered minute.
30 & 31 Vict. c.
131, s. 18.*

50. A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding one hundred (A) pounds for each copy in respect of which such default shall be made (B), and every director and manager of the

company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty. **Sect. 53.**

(A) Eng. Act omits "hundred."

(B) *Id.* reads "is made."

51. If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanour.

Penalty on concealment of name of creditor.
30 & 31 Vict. c. 131, s. 19.

Subdivision of Shares.

52. Any company limited by shares may by special (a) resolutions (A) so far modify the conditions contained in its memorandum of association, if authorised so to do by its resolutions (B) as originally framed, or as altered by special resolution, as, by subdivision of its existing shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association (b): Provided that in the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Shares may be divided into shares of a smaller amount
30 & 31 Vict. c. 131, s. 21

Buckley, pp. 522, 523.

(A) *Sic*; Eng. Act reads—"Resolution," cp. s. 53.

(B) *Sic*; Eng. Act—"Regulations."

(a) s. 83.

(b) s. 11.

53. The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding one pound for each copy in respect of which such

Special resolution to be embodied in memorandum of association.
30 & 31 Vict. c. 131, s. 22.

Sect. 54. default is made, and every director and manager of the company who knowingly or wilfully authorises or permits such default shall incur the like penalty.

Associations not for Profit.

Special provisions as to associations formed for purposes not of gain.
30 & 31 Vict. c. 131, s. 23.

54. When any association is about to be formed under this Act (A) as a limited company, if it proves to the Governor and the Executive Council (B) that it is formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it is the intention of such association to apply the profits, (if any), or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Governor, with the advice of the Executive Council (B), may, by license under the hand of the Colonial Secretary (C), direct such association to be registered with limited liability, without the addition of the word "limited" to its name (A), and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited companies, with the exceptions that none of the provisions of this Act that require a limited company to use the word "limited" as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the Registrar, shall apply to an association so registered (B).

The license of the Governor with the advice aforesaid (B) may be granted upon such conditions and subject to such regulations as the Governor with the advice aforesaid (B) thinks fit to impose, and such conditions and regulations shall be binding on the association, and may, at the option of the said Board (D) be inserted in the memorandum and articles of association, or in both or one of such documents.

(A) Eng. Act reads—"the Principal Act."

(B) *Id.* reads—"Board of Trade."

(C) *Id.* reads—"one of the secretaries or assistant secretaries."

(D) *Sic*, copied from the Eng. Act by mistake, the meaning being, "Governor with the advice of the Executive Council."

(a) For form of such license, see Form 108, *infra*.

(b) ss. 7, 8, 24, 73, 74, 77, 78.

55. No association (A) formed for the purpose of promoting commerce (B), art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, shall without the sanction of the Governor with the advice of the Executive Council (C) hold more than two acres of land; but the Governor with the advice aforesaid (C) may, by license under the hand of the Colonial Secretary (D), empower any such association (A) to hold lands in such quantity and subject to such conditions as he (E) may think fit.

Prohibition
against such
associations
holding land.
25 & 26 Vict. c.
89, s. 21.

(A) Eng. Act reads—"company."

(B) *Id.* omits "commerce."

(C) *Id.* reads—"Board of Trade."

(D) *Id.* reads—"one of their principal secretaries or assistant secretaries."

(E) *Id.* reads—"they."

(a) Form 109, *infra*.

All other companies except those named in this section are, under s. 17, unrestricted in the matter of holding lands.

In the Eng. Act a form of license is given in Sch. II., Form F., which is omitted in the N.S.W. Act. See the form in Buckley, p. 506, and Form 109, *infra*.

Calls upon Shares.

56. Nothing (A) shall be deemed to prevent any company (B) if authorised by its regulation (*sic*) (C) as originally granted (D) or as altered by special resolution (A) from doing any one or more of the following things, viz.:—

Company may
have some
shares fully
paid and others
not.
30 & 31 Vict. c.
131, s. 24.

- (1) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid (E):
- (2) Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him, or without any call having been made:
- (3) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others (B).

Buckley, pp. 274—277.

(A) Eng. Act adds—"contained in the Principal Act."

(B) *Id.* adds—"under that Act."

(C) *Id.* reads—"regulations," evi-

(a) s. 83.

dently a misprint in our Act.

(D) *Id.* reads—"framed."

(E) *Id.* adds—"and in the time of payment of such calls."

(b) See note to s. 167, Eng. s. 109.

Sect. 57.

Manner in
which shares
are to be issued
and held.
30 & 31 Vict. c.
131, s. 25.

57. Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by (A) contract duly made in writing, and filed with the Registrar of Joint Stock Companies at or before the issue of such shares.

Buckley, pp. 524—533.

(A) Eng. Act reads—"by a contract."

Shares when
paid up;

in cash;

under regi-
stered contract.

Purchase with-
out notice.

Damages for
non-registra-
tion.

Shares will be deemed to be paid-up shares (in the hands of original allottees) in two cases: (1) If there have been in law a payment for them; or (2), If there is a contract in writing, that they shall be held as paid, filed at or before the issue of such shares. As to the first case, cash need not actually pass. Anything that would support a plea of payment in law is sufficient, as, e.g., a set-off of existing debts between the company and the shareholders: *Spargo's Case*, 8 Ch. 407. But see *Kent's Case*, 37 Ch. D. 508, where it was held that a mere resolution of the directors that a debt should be set-off against payment of calls, not carried into effect by entry in the books of the company and no contract being registered, did not make the shares paid up; affirmed, 39 Ch. Div. 259. But see *In re Jones, Lloyd & Co.*, 41 Ch. D. 159; and *In re Branksea Island Co.*, e.p. *Bentinck* (No. 1), 1 Megone's Companies Cases, 12 (1889).

As to the second case, "the Act provided for payment in cash, unless a contract was registered; but it contains nothing to authorise a contract that the shares shall not be paid up in full, either in cash or otherwise:" per Cotton, L.J., *In re Addlestone Linoleum Co.*, 37 Ch. Div. at p. 204. And Lindley, L.J., says in the same case: "The Act only regulated the mode of payment, it prescribed that shares must be paid up in cash unless a contract providing for some other mode of payment had been registered; but it contains no provision exempting shares from being paid up in full:" at p. 205. The decisions in *In re Ince Hall Rolling Mills Co.*, 23 Ch. D. 545, n., and *In re Plaskynaston Tube Co.*, 23 Ch. D. 542, are by this case disapproved. And see *Re Almada and Tivito Co.*, 38 Ch. Div. 415, where the same cases are overruled. But in the hands of a purchaser without notice, a company which has issued shares as paid up is estopped from denying that they are so paid up: *Burkinshaw v. Nicholls*, 3 App. Cas. 1004. And the burden of proof of notice in fact that the shares are not paid up is on the party alleging it: *ib.*, and see *In re A. W. Hall & Co.*, 37 Ch. D. 712. And it has been said that a holder without notice can give a good title to a subsequent holder with notice: *Barrows' Case*, 14 Ch. Div. 282. This has been doubted—*In re London Celluloid Co.*, 39 Ch. Div. 190—but followed later *In re Railway Time Tables Publishing Co.*, e.p. *Sandys*, 42 Ch. Div. 98.

Where there was a contract by the company to issue fully paid up shares as payment for work done for the company, but the contract was not filed with the Registrar, and the shares were accordingly considered in the winding-up as unpaid, though, in fact, issued as paid, it was held in *Mudford's Claim*, 14 Ch. D. 634, that the allottee could claim as damages against the company the amount of calls made, or to be made, on the shares; and so in e.p. *Appleyard*,

18 Ch. D. 587. But these cases have been questioned in the Court of Appeal: **Sect. 58.**
In re Addlestone Linoleum Co., 137 Ch. Div. 19.

But if by mistake no contract be registered, and the allottees were ignorant of that fact when shares were allotted to them, the register may be rectified by the Court while the company is a going concern, by striking out the names of those shareholders and issuing new shares to them after the filing of a proper agreement: *In re Darlington Forge Co.*, 34 Ch. D. 522; and see *Broad Street Station Dwellings Co.*, W.N. (1887) 149.

Issue of shares at a discount has now been held to be illegal: *In re Addlestone Linoleum Co.*, *supra*, and *In re Almada and Tirito Co.*, 38 Ch. Div. 415; followed by *In re New Chile Gold Mining Co.*, 38 Ch. D. 475; even though there be a contract with the shareholders, registered: *ib.* And so where there was a contract registered, but shares were not issued in terms of that contract: *In re Zoedone Co.*, *e.p. Higgins*, 1 Megone's Companies Cases 158 (1889).

Although the registered contract was not executed by the company, yet the contract is good: *In re The Hidden Star G.M. Co.*, *Pickering's Case*, 10 N.S.W. L.R. Eq. 35; but see *In re New Eberhardt Co.*, *e.p. Mensies*, W.N. (1889) 142: *ib.* 200; 43 Ch. Div. 118.

Where ten persons had interests in certain patents, and a company was formed and registered, seven of the ten persons signing the memorandum and articles, and by the articles, one of the ten persons who also signed the articles declared himself, with the concurrence of the other persons interested, a trustee for the company of the patents; and afterwards the company agreed to purchase the interests of the ten persons from them in consideration of fully paid-up shares, and this contract was registered and the shares issued, *held*, that the contract was without consideration, and the shares must be considered as unpaid for: *Re Cattinach Chemical Works Co.*, *Bennett's Case*, 10 N.S.W. L.R. Eq.

Where a broker on the Stock Exchange bought shares which had been issued by a company as paid up, and were the only shares known as such on the market, his principal refused to accept the shares, on the ground that they were not, in fact, paid up, no contract having been registered. The broker sold the shares and brought action against his principal for the difference in price. *Held*, that it was no defence that the shares were not, in fact, paid up, as the broker had bought what he was instructed to buy: *Palmer v. Upward*, 7 N.S.W. L.R. 296.

Transfer upon Shares.

58. A company shall, on the application of the transferor of any share or interest in the company, enter in its register of members the name of the transferee of such share or interest, in the same manner and subject to the same conditions as if the application for such entry were made by the transferee (*a*).

Buckley, p. 533.

(*a*) ss. 20, 33.

The ordinary contract on the sale of registered shares is only that the seller should give to the purchaser a valid transfer and do all required to enable the

Sect. 59. purchaser to be registered as member in respect of such shares, the duty of the purchaser being to get himself registered as such member. This section is only for the protection of the transferor in case the transferee fails to perform his duty: *Skinner v. City of London Marine Insurance Co.*, 14 Q.B. Div. 882, 888.

A company was ordered to register a transfer on motion on behalf of the transferors under s. 33: *In re Stranton Iron and Steel Company*, 16 Eq. 559; and in *Ward v. Dowling*, 19 L.T. 277, a bill was filed for the same purpose.

Share warrants to bearer.

Warrant of limited shares fully paid up may be issued in name of bearer.
30 & 31 Vict. c. 131, s. 27.

59. In the case of a company limited by shares, the company, if authorised so to do by its regulations as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of (A) future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a share warrant.

(A) Eng. Act reads—"of the future dividends."

Effect of share warrant.
30 & 31 Vict. c. 131, s. 28.

60. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

Re-registration of bearer of a share warrant in the register.
30 & 31 Vict. c. 131, s. 29.

61. The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members. And the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled.

Regulations of the company may make the bearer of a warrant a member.
30 & 31 Vict. c. 131, s. 30.

62. The bearer of a share warrant may, if the regulations of a (A) company so provide be deemed to be a member (a) of the company within the meaning of this Act (b) either to the full extent or for such purpose (c) as may be prescribed by the regulations:

Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such

warrant for being a director or manager of the company in cases **Sect. 65.**
where such a qualification is prescribed by the regulations of the
company.

Buckley, p. 584.

(A) Eng. Act reads—"of the com- (B) *Id.* refers to the "Principal Act."
pany." (C) *Id.* reads—"for such purposes."

(a) s. 21.

63. On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars:—

Entries in
register where
share warrant
issued.
30 & 31 Vict. c.
131, s. 31.

- (1) The fact of the issue of the warrant;
- (2) A statement of the shares or stock included in the warrant, distinguishing each share by its number;
- (3.) The date of the issue of the warrant;

And until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the twenty-third (A) section of this Act (B) to be entered in the register of members of a company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

(A) Eng. Act reads—"twenty-fifth." (B) *Id.* "the Principal Act."

64. After the issue by the company of a share warrant, the annual summary required by the twenty-fourth (A) section of this Act (B) shall contain the following particulars,—The total amount of shares or stock for which share warrants are outstanding at the date of the summary, and the total amount of share warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

Particulars to
be contained in
annual sum-
mary.
30 & 31 Vict. c.
131, s. 32.

(A) Eng. Act reads—"twenty-sixth." (B) *Id.* "the Principal Act."

65. Whosoever forges, or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act, or demands

Penalties on
persons
committing
forgery.
30 & 31 Vict. c.
131, s. 34.

Sect. 66. or endeavours to obtain or receive any share or interest of or in any company under this Act (A), or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered share warrant, or (B) coupon, or document, purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for any term not less than two years with or without hard labour (C).

(A) Eng. Act reads—"the Principal Act."
(B) *Id.* "warrant or coupon."
(C) *Id.* provides different punishment.

Penalties on persons falsely personating owners of shares.
30 & 31 Vict. c. 131, s. 35.

66. Whosoever falsely and deceitfully personates any owner of any shares (A) or interest of or in any company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest, or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if such offender were the true and lawful owner, shall be guilty of felony, and being convicted thereof, shall be liable (B) to be imprisoned for any term not less than two years with or without hard labour.

(A) Eng. Act reads—"any shares."
(B) *Id.* provides a different punishment.

Penalties on persons engraving plates, &c.
30 & 31 Vict. c. 131, s. 36.

67. Whosoever, without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant (A) issued or made by any particular company under and in pursuance of this Act, or to be a blank share warrant or coupon (B) or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other materials (C), shall be guilty of felony, and upon conviction thereof (D), shall be liable to be imprisoned for any term not less than two years with or without hard labour (E).

(A) Eng. Act reads—"or coupon."
(B) *Id.* "issued or made as aforesaid or to be a part of such a share warrant or coupon."
(C) *Id.* "materials."
(D) *Id.* "being convicted thereof."
(E) *Id.* provides a different punishment.

*Contracts.*Sect. 69.

68. Contracts on behalf of any company (A) may be made as follows : (that is to say,)—

- (1) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged :
- (2) Any contract which if made between private persons would be by law required to be in writing, and signed by the party to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged :
- (3) Any contract which if made between private persons would by law be valid (B) by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged.

Contracts, how made.
30 & 31 Vict. c. 131, s. 37.

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors and all other parties thereto, their heirs, executors, or administrators, as the case may be.

Buckley, pp. 536, 537.

(A) Eng. Act adds—"under the Principal Act." (B) *Id.* adds—"although made."

S. 79 provides for promissory notes and bills of exchange; and s. 74 a penalty on not using the proper name of the company. And as to execution of deeds by attorney, see s. 87.

Under sub-s. 2 of this section it was held by Stephen and Deffell, JJ. (*Owen, J., dubitante*), that there can be no waiver or exoneration by a company except in writing: *Braunbeck v. Mercantile Building, Land, &c., Co.*, 9 N.S.W. L.R. 9.

69. Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint stock company, shall

Prospectus, &c. to specify dates and names of

Sect. 70. specify the names and the dates (A) of the parties to any contract entered into by the company, or the promoters, directors, or trustee (B) thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors of (C) the company, or otherwise; and any prospectus (D) not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus unless he shall have had notice of such contract.

parties to any contract made prior to issue of such prospectus, &c.
30 & 31 Vict. c. 131, s. 38.

Buckley, pp. 537—546.

(A) Eng. Act reads—"the dates and the names."
(B) *Id.* "trustees."
(C) *Id.* "or the company."
(D) *Id.* adds—"or notice."

Remedy under section.

The remedy given to shareholders, where this section applies, has been held to be against the promoters, &c., personally, and the shareholder is not entitled to have his name removed under s. 33 (*q. v.*) *Gover's Case*, 20 Eq. 114; 1 Ch. Div. 182; but, *semble*, it would be otherwise if the concealment amounted to actual, and not merely statutory, fraud; *ib.* Under this section the shareholder has no remedy against the company, nor the corporation, *i. e.*, the company, against the promoters: *ib.* But promoters, and *a fortiori* directors and trustees, stand in a fiduciary relation to the company, and thus may be made liable under the general law to account to the company for any secret profits they may have made in the formation of the company: *Lydney and Wigpool Iron Ore Co. v. Bird*, 33 Ch. Div. 85. See also s. 216.

What contracts to be disclosed

As to what contracts must be disclosed by the prospectus: "Upon the balance of authority, the law must at present be taken to be that the prospectus must disclose not only contracts which impose an obligation upon the company, but also all contracts entered into by the promoters, &c., whether before or after they become promoters, &c., which relate to the affairs of the company or of its promoters, vendors, directors, and officers, and which are material for an intending applicant to know." Buckley, p. 540.

Company to hold meeting within four months after registration.
30 & 31 Vict. c. 131, s. 39.

70. Every company formed under this Act (A) shall hold a general meeting (a) within four months after its memorandum of association is registered; and if such meeting is not held the company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such four months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly

authorises or permits such default shall be liable to the same Sect. 73. penalty.

Buckley, p. 546, and see note to Art. (58), Table A. *ib.* p. 480.

(A) Eng. Act reads—"the Principal Act after the commencement of this Act."

(a) See s. 81.

This section will be complied with by holding an extraordinary meeting within four months after registration: *Lord Claud Hamilton's Case*, 8 Ch. 548 and see note to Table A. (58).

PART III. (ss. 71—125.)

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for Protection of Creditors.

71. Every company under this Act shall have a registered office to which all communications and notices may be addressed Registered office of company. 25 & 26 Vict. c. 89, s. 39.
 (a). If any company under this Act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Buckley, pp. 149, 150, and see note to Rule 3, Gen. Order, Nov., 1862, *ib.* pp. 613, 614.

(a) s. 94.

Where there is no registered office, a creditor may serve his demand under s. 132 at the company's unregistered office; (so held, *Re The British and Foreign Gas, &c., Co.*, 11 Jur. (N.S.) 559).

72. Notice of the situation of such registered office, and of any change therein, shall be given to the Registrar, and recorded by him; and (A) until such notice is given, the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office. Notice of situation. 25 & 26 Vict. c. 89, s. 40.

(A) Eng. Act omits "and," and reads "until such notice."

73. Every limited company under this Act, whether limited by shares or by (A) a guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a Publication of name by a limited company. 25 & 26 Vict. c. 89, s. 41.

Sect. 74. conspicuous position, in letters easily legible, and shall have its name engraved in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company (a).

(A) Eng. Act reads—"by guarantee."

(a) For penalties in default, see s. 74, *infra*.

Penalties on
non-publication
of name.
25 & 26 Vict. c.
89, s. 42.

74. If any limited company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act (a) it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not kept so painted or affixed, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall be liable to the like penalty; And if any director, manager, or officer of such company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid (b), or issues or authorises the issue of any notice, advertisement, or other official publication of such company, or signs or authorises to be signed on behalf of such company, any bill of exchange, promissory-note, indorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is (A) mentioned in manner aforesaid (c), he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory-note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Buckley, p. 151.

(A) Eng. Act—"not mentioned"; which was clearly intended.

(a) See preceding section.

(b) *Ib.*

(c) *Ib.*

. . . "Unless, in making a promissory-note or accepting a bill of exchange, it is made clear on the face of it that it is made for a company, the makers or acceptors themselves must be taken to be personally liable," *per cur.*, *The Imperial Land, &c., Co. v. Melvay & Mason*, 6 N.S.W. W.N. at p. 15.

75. Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge: If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds: The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director or manager of the company authorising or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty any Judge of the Supreme Court sitting in Chambers (A) may by order compel an immediate inspection of the register.

Sect. 75.

Register of
mortgages.
25 & 26 Vict. c.
89, s. 43.

Buckley, pp. 151—164.

(A) Eng. Act, the tribunal is a Judge registered in England and Ireland; sitting in Chambers, for companies but otherwise in the Stannaries.

The section does not invalidate unregistered mortgages; and though it was for some time held as regards directors, whose duty it is to see that the section is complied with, that where they took a security from the company and omitted to register it, it was void as against other creditors; yet this doctrine has been overruled, and it is now held that a mere omission to register, without concealment, does not invalidate the security: *Wright v. Horton*, 12 App. Cas. 371.

Mortgage to
directors.

A company may, *prima facie*, borrow and mortgage, in furtherance of the objects of its existence; but there may be in its articles express or implied restrictions on its borrowing powers: *In re Patent File Co., s.p. Birmingham Banking Co.*, 6 Ch. 83. Power given by the memorandum or contemporaneous articles to charge future calls is valid; *Phoenix Bessemer Steel Co.*, 44 L.J. Ch. 683-685, followed in *Re Pyle Works Co.*, W.N. (1890) 3, where mortgages were made by directors of uncalled capital and property to secure advances, and it was held that the mortgagees were entitled to be paid what was due on the mortgages out of calls made in the winding-up in priority to the unsecured creditors of the company.

Borrowing
powers.

The registration required by the section is of the property charged: *Smith's Case*, 11 Ch. Div. at p. 585. If money has been borrowed to an amount exceeding

Property to be
registered.

Sect. 76. the borrowing powers of the company (if there is a limit to those powers), the company is not liable for the debt; but if they have in fact benefited by the loan, the lenders may claim to that extent against the company, coming in after other creditors have been satisfied: *Chapleo v. Brunswick Building Society*, 6 Q.B. Div. 696; *In re Guardian Permanent Benefit Building Society*, 23 Ch. Div. 440.

Certain companies to publish statement.
25 & 26 Vict. c. 89, s. 44.

76. Every limited banking company and every insurance company, and deposit, provident, or benefit society under this Act shall, before it commences business and also on the first Monday in February, and the first Monday in August in every year during which it carries on business, make a statement in the form marked D in the First Schedule hereto, or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on, and if default is made in compliance with the provisions of this section the company shall be liable to a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above mentioned statement on payment of a sum not exceeding sixpence.

List of directors to be sent to Registrar.
25 & 26 Vict. c. 89, s. 45.

77. Every company under this Act, and not having a capital divided into shares (a), shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of Joint Stock Companies a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

(a) See s. 24, as to other companies.

Penalty on company not keeping register of directors.
25 & 26 Vict. c. 89, s. 46.

78. If any company under this Act, and not having a capital divided into shares, makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such

directors or managers, such delinquent company shall incur a Sect. 80.
penalty not exceeding five pounds for every day during which
such default continues, and every director and manager of the
company who shall knowingly and wilfully authorise or permit
such default shall incur the like penalty.

79. A promissory-note or bill of exchange shall be deemed to
have been made, accepted, or indorsed by (A) any company
under this Act, if made, accepted, or indorsed in the name of the
company by any person acting under the authority of the
company, or if made, accepted, or indorsed by or on behalf or on
account of the company by any person acting under the authority
of the company.

Promissory
notes and bills
of exchange.
25 & 26 Vict. c.
89, s. 47.

Buckley, pp. 165—167.

(A) Eng. Act reads—"on behalf of."

"Without a special authority, express or implied, a corporation has no power
to make, indorse, or accept bills or notes;" Byles on Bills, 14th ed., p. 78. But
the authority may be implied in the very objects of the existence of the
corporation, as in a trading company: *Bateman v. Mid Wales Railway Co.*,
L.R. 1 C.P. at p. 512. Acceptance of a bill drawn on the company need not be
expressed to be on behalf of the company: *Okell v. Charles*, 34 L. J. 882. But
see *E.S. & A.C. Bank v. Gunn*, 10 S.C.R. 244. And *quære*, under the section
whether the name of the company need appear at all on a bill or note in order
to charge the company, if in fact made or accepted on behalf of the company;
though the person making or accepting it is, if the name do not appear,
personally liable under s. 74: *Leadbitter v. Farrow*, 5 M. & S. 349; *Lindus v.*
Bradwell, 5 C.B. 583; *Wilson v. Joshua*, 6 S.C.R. 319; and the "Bills of
Exchange Act, 1887," ss. 23, 26.

Authority to
draw bills.

80. If any company under this Act carries on business when
the number of its members is less than seven for a period of six
months after the number has been so reduced, every person who
is a member of such company during the time that it so carries
on business after such period of six months, and is cognizant of
the fact that it is so carrying on business with fewer than seven
members, shall be severally liable for the payment of the whole
debts of the company contracted during such time, and may be
sued for the same, without the joinder in the action or suit
of any other member (a).

Prohibition
against carry-
ing on business
with less than
seven members.
25 & 26 Vict. c.
89, s. 48.

(a) And see s. 131 (3).

Sect. 81.*Provision for Protection of Members.*

General meet-
ing of company.
25 & 26 Vict. c.
89, s. 40.

81. A general meeting of every company under this Act shall be held once at the least in every year (a).

Buckley, p. 167.

(a) See provisions in Sch. I. Table A. 29—43, *infra*.

By s. 70 a meeting is to be held within four months after registration, *q. v.* and note to Table A (58).

Power to alter
regulations by
special resolu-
tion.
25 & 26 Vict. c.
89, s. 50.

82. Subject to the provisions of this Act, and to the conditions contained in the memorandum of association (a), any company formed under this Act may, in general meeting from time to time, by passing a special resolution in manner hereinafter mentioned (b), alter all or any of the regulations of the company contained in the articles of association (c) or in the Table marked A in the First Schedule, where such Table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution (d).

Buckley, pp. 168—170.

(a) ss. 5—12; 41—52.

(b) s. 83.

(c) ss. 13—15.

(d) And as to companies coming under the Act under Part VI., see s. 240.

Definition of
special resolu-
tion.
25 & 26 Vict. c.
89, s. 51.

83. A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy (in cases where by the regulations of the company proxies are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly

given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was first passed. At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried, shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the company. In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company. Sect. 83.

Buckley, pp. 171—173.

Notices of intention to do something in terms of the provisions of some section of the Act must follow those terms very strictly; as in *Bridport Old Brewery Co.*, 2 Ch. 191, where it was held, that for the purpose of an extraordinary resolution under s. 180, sub-s. 3, though it may not be necessary to follow in the notice the precise terms of that section, yet the shareholders were entitled to have a notice which would give them to understand that it was proposed to proceed thereunder: *per* Turner, L.J., at p. 194 and *cf. In re Silkstone Fall Colliery Co.*, 1 Ch. Div. 38; and see, distinguishing these cases, *In re N.S.W. Property Investment Co.*, 10 N.S.W. L.R. Eq. 214, where the extraordinary resolutions at the foot of a notice (under this and the 180th s.) contained a distinct allegation that the company "cannot, by reason of its liabilities, continue its business," and it was also proposed to consider a resolution to wind-up the company, and, if necessary, to adopt such resolution "as special, extraordinary or otherwise," the form of such resolution being reserved for the decision of the meeting, and an intimation was given to the shareholders that the resolution might be adopted as an extraordinary resolution, in which case they would have no further opportunity of considering it, such notice was held good: *per* Owen, Ch. J. Eq. Notice:—
under sec. 180

And with regard to the requisites of a notice under s. 212, see *Imperial Bank of China, &c., v. Bank of Hindustan, &c.*, 6 Eq. 91, where it was held that the circular convening the meeting at which a proposal to transfer the business of one company to another, under section 212, was to be submitted to the shareholders must contain distinct notice that the arrangement is to be carried out by the liquidators under that section. In this case the articles of the company contained power to amalgamate. In *Israel v. Atlas Engineering Co.*, 10 N.S.W. L.R. Eq. 277, one of the objections taken to a transaction under s. 212 was that due notice of the meeting to confirm the resolution to effect such sale was not given. The notice gave the date, time and place of the extraordinary meeting under sec. 212

Sect. 84. at which a resolution subjoined to the notice was to be submitted, and then stated that should the resolution be passed by the required majority, it would be submitted for confirmation, as a special resolution to a second extraordinary meeting, which, in the absence of further notice, would be held on (a day named) at the same time and place. To this notice the resolution was subjoined. Such notice was held good: *per* Owen, Ch. J. Eq.; but see *Alexander v. Simpson*, W.N. (1889) 181, where—*per* Chitty, J.—a notice that an extraordinary general meeting of the company will be held at a certain place and time for the purpose of considering and, if deemed advisable, of passing certain resolutions stated in the notice, and “should such resolutions be passed, the same will be submitted for confirmation as special resolutions to a subsequent extraordinary general meeting of the company, which will be held on (a day named) at the same hour and place,” is not of itself a good notice to the shareholders of the latter meeting; and see *S.C.*, 43 Ch. Div. 139.

A resolution of an extraordinary general meeting, invalid for want of sufficient notice, is incapable of being ratified by a general meeting, whose powers are limited to acts not contrary to the deed: *Lawes' Case*, 1 De G. M. & G. 421.

Provision
where no
regulation as
to meetings.
25 & 26 Vict. c.
30, s. 53.

84. In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the Table marked A in the First Schedule hereto (a), and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same, and in default of any regulation (A) as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Buckley, pp. 173, 174.

(A) Eng. Act reads—“any regulations.”

(a) Sch. I. Table A. (95) (97).

As to voting see *ib.* (44).

Registry of
special resolutions.
25 & 26 Vict. c.
80, s. 53.

85. A copy of any special resolution that is passed by any company under this Act shall be printed and forwarded to the Registrar of Joint Stock Companies, and be recorded by him. If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted

to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty. **Sect. 88.**

Buckley, p. 174.

See the suggestion in Buckley, *ubi sup.*, as to registration of extraordinary resolutions.

86. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution : Where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the company may direct : And if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made ; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty (a).

Copies of special resolutions.
25 & 26 Vict. c.
89, s. 54.

(a) And see s. 41.

87. Any company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place wheresoever situate (A), and every deed signed by such attorney, on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

Execution of deeds on behalf of companies.
25 & 26 Vict. c.
89, s. 55.

(A) Eng. Act reads—"not situate in the United Kingdom," and the side abroad."

By s. 153 of the "Bankruptcy Act" of 1887, a corporation for all purposes of that Act may act by any of its officers authorised in that behalf under the seal of the corporation.

88. The Governor, with the advice of the Executive Council (A), may appoint one or more competent inspectors to examine into the affairs of any company under this Act, and to report thereon, in such manner as the Governor with such advice (B) may direct, upon the applications following (that is to say) :—

Examination of affairs of company by inspectors.
25 & 26 Vict. c.
89, s. 56

Sect. 89.

- (1) In the case of a banking company that has a capital divided into shares, upon the application of members holding not less than one-third part of the whole shares of the company for the time being issued :
- (2) In the case of any other company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued :
- (3) In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

Buckley, p. 175.

(A) Eng. Act reads — "Board of Trade." (B) *Id.* reads—"the Board."

Application for inspection to be supported by evidence.
25 & 26 Vict. c. 89, s. 57.

89. The application shall be supported by such evidence as the Governor, with the advice of the Executive Council (A), may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same ; The Governor with such advice (A) may also require the applicants to give security for payment of the cost of the enquiry before appointing any inspector or inspectors.

(A) Eng. Act reads—"Board of Trade."

Inspection of books.
25 & 26 Vict. c. 89, s. 55.

90. It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power ; and (A) any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly : If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence.

Buckley, p. 176.

(A) Eng. Act omits "and."

See Table A. (78) as to inspection of books of account by members.

91. Upon the conclusion of the examination the inspectors **Sect. 93.**
 shall report their opinion to the Governor and Executive Council Result of examination, how dealt with. 25 & 26 Vict. c. 89, s. 59.
 (A) ; and (B) such report shall be written or printed as the Governor with the advice of such Council (A) directs : A copy shall be forwarded by the Colonial Secretary (A) to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them : All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed ; unless the Governor with the advice of the Executive Council (A) shall direct the same to be paid out of the assets of the company, which he with such advice (C) is hereby authorised to do.

(A) Eng. Act reads — "Board of Trade."
 (B) Eng. Act omits "and."
 (C) Eng. Act reads—"it."

92. Any company under this Act may by special resolution appoint inspectors for the purpose of examining into the affairs of the company ; and (A) the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Governor with the advice of the Executive Council (B), with this exception, that instead of making their report to the Governor and Executive Council (B), they shall make the same in such manner and to such persons as the company in general meeting directs ; and the officers and agents of the company shall incur the same penalties ; in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspector had been appointed by the Governor with the advice aforesaid (B). Power of company to appoint inspectors. 25 & 26 Vict. c. 89, s. 60.

(A) Eng. Act omits "and." (B) Eng. Act reads—"Board of Trade."

93. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report. Report of inspectors to be evidence. 25 & 26 Vict. c. 89, s. 61.

Notices.

Sect. 94. 94. Any summons, notice, order, or other document required to be served upon the company, may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company at their registered office (a).

Services of
notices on
company.
25 & 26 Vict. c.
89, s. 62.

Buckley, p. 177.

(a) s. 71.

Service of notices upon members is regulated under Table A. (95)—(97). See R. 3, as to service of a winding-up petition; R.E. 60, 61 as to service on contributors and creditors of the company.

95. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post office.

Rules as to
notices by
letter.
25 & 26 Vict. c.
89, s. 63.

96. Any summons, notice, order, or proceeding requiring authentication by the company may be signed by any director, secretary, or other authorised officer of the company, and need not be under the common seal of the company, and the same may be in writing, or in print, or partly in writing and partly in print.

Authentication
of notices of
company.
25 & 26 Vict. c.
89, s. 64.

As to the acts of a corporation under the "Bankruptcy Act," see note to s. 87.

Legal Proceedings.

97. All offences under this Act made punishable by any penalty may be prosecuted summarily before two or more Justices of the Peace (A).

Recovery of
penalties.
25 & 26 Vict. c.
89, s. 65.

(A) Eng. Act adds directions under for application of the penalty, as to what Acts in England, Scotland, and which nothing is said by the N.S.W. Ireland these penalties are to be Act. recovered; and Eng. sec. 66 provides

Penalty how
recovered.

Wherever, as in this case, an Act is silent as to the appropriation of the penalty thereby imposed it is enacted by the "Acts Shortening Act," 16 Vic. No. 1, s. 15, that a moiety of the penalty when recovered be paid to "Her Majesty for the public uses of this colony," and the other moiety to the "informer or person prosecuting or suing for the same;" and by s. 16 of the

same Act, "Any fine, penalty, or forfeiture so imposed may be sued and proceeded for by any person whomsoever unless by the Act imposing the same such right to sue or proceed shall be expressly given to any officer or person by name or designation."

Sect. 99.

98. Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings (a); and until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had, and all appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualification.

Evidence of
proceedings at
meetings.
25 & 26 Vict. c.
89, s. 67.

Buckley, pp. 178—180.

(a) And in proceedings in winding-up, see s. 205.

"Endangering accuracy for the sake of brevity, it may perhaps be said that the effect of the last sentence of this section and of the similar provision frequently found in articles of association is that, as between the company and persons having no notice to the contrary, directors, &c., *de facto*, are as good as directors, &c., *de jure*": Buckley, p. 179; and see the remarks of Lord Hatherley in *Mahon v. East Holyford Mining Co.*, L.R. 7 H.L. 869, at p. 898, *et seq.*, on the duties of shareholders in such a case.

99. Where a limited company is plaintiff (A) in any action, suit, or other legal proceeding, any Judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe (a) that if the defendant be successful in his defence the assets of the company will be insufficient to pay

Provision as to
costs in certain
cases.
25 & 26 Vict. c.
89, s. 69.

Sect. 100. his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Buckley, pp. 181, 182.

(A) Eng. Act adds—"or pursuer;" referring to Scottish practice.

(a) *e.g.* The fact of a limited company being in liquidation supplies such reason, at least *prima facie*: *Northampton Coal Co. v. Midland Carriage Co.*, 7 Ch. Div. 500, and see also *Moscow Gas Co. v. International Financial Society*, 7 Ch. 225, as to security by a company in liquidation.

Declaration in
action against
members.
25 & 26 Vict. c.
89, s. 70.

100. In any action or suit brought by the company against any member to recover any call or other moneys due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other moneys due whereby an action or suit hath accrued to the company.

Buckley, p. 183.

As to transferor's liability, see Table A. (4).

Quere, whether under this section a transferor being no longer a member is liable.

In an action for calls a plea of alleged misrepresentation by directors that the calls would be devoted to a certain purpose, there being no allegation of fraud and no repudiation of shares, *held* on demurrer bad: *The Bendemeer Tin Mining Co. v. Newton*, 8 N.S.W. L.R. 28.

Alteration of Forms.

Alteration of
forms.
25 & 26 Vict. c.
89, s. 71.

101. The forms set forth in the Second Schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer; and the Governor with the advice of the Executive Council (A) may from time to time make such alterations in the tables and forms contained in the First Schedule hereto so that no such alteration increases (B) the amount of fees payable to the Registrar in the said Schedule mentioned, and the Governor with such advice may also from time to time make such alterations (C) in the forms in the Second Schedule, or make such additions to the last-mentioned forms as he with such advice (D) deems requisite. Any such table or form, when altered, shall be published in the Government Gazette (E), and upon such publication being made such table or form shall have the same force as if it were included

in the Schedule to this Act, but no alteration made by the Governor with the advice aforesaid (A) in the Table marked A. contained in the first Schedule shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of such Table. Sect. 102.

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|--|--------------------------------------|
| (A) Eng. Act reads—"the Board of Trade." | (D) Eng. Act reads—"it." |
| (B) Eng. Act reads—"it does not increase." | (E) Eng. Act reads—"London Gazette." |
| (C) Eng. Act omits the words— | |

It has been found on enquiry at the office of the Registrar of Companies that no alterations have been made in pursuance of this section.

Arbitrations.

102. Any company under this Act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration, as hereinafter provided (A), any existing or future difference, question, or other matter whatsoever in dispute between itself and any other company or person, and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies, and no party to any such agreement of reference shall have power to revoke the same without the consent in writing of the other party thereto, nor shall the death of any party operate as a revocation thereof (B).

Power for companies to refer matters to arbitration.
25 & 26 Vict. c. 89, s. 72.

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| (A) Eng. Act reads—"in accordance with the 'Railway Companies Arbitration Act, 1859.'" | (B) Eng. Act omits the words from "and no party" to the end of the section. |
|--|---|

By s. 78 of the Eng. Act the provisions of the "Railway Companies Arbitration Act" are made to apply to the "Companies Act"; the N.S.W. Act, however, goes on to make the usual provisions for arbitration, with which cf. 31 Vict. No. 15.

Where disputes had arisen between a company registered under this Act and certain other persons, and those disputes had been referred to arbitration, without any special mention that the reference was under the "Arbitration Act," held that it must be taken to be a reference under these sections of the "Companies Act," and inasmuch as the arbitrators had not made the declaration required by s. 118, *infra*, their award must be set aside: *Re Trades and Industrial, &c., Association and Murray & Lenehan*, S.M.H., 1st March, 1890.

Sect. 103.

Mode of conducting arbitrations.

103. Whenever any dispute, authorised by this Act to be referred to arbitration, shall have been in manner hereinbefore provided agreed to be so referred, and wherever any dispute, directed by this Act to be so referred, shall have arisen, then, except where and so far as the parties to such reference shall otherwise agree or provide, such arbitration shall be conducted in the manner and shall have the effect hereinafter provided.

Appointment of arbitrators.

104. Unless both parties shall concur in the appointment of a single arbitrator, each party on the request of the other party shall nominate and appoint an arbitrator to whom such dispute shall be referred, and shall give notice in writing thereof to the other party; and every appointment of an arbitrator shall be made on the part of the company under its common seal or under the hand of the manager or secretary or any two directors of the company, or, if there be a liquidator or liquidators of the company, under the hand of the liquidator, if only one, or any two or more of the liquidators, if more than one, and on the part of any other party under the hand of such party, or, if such party be a corporation aggregate, under the common seal of such corporation; and such appointment shall be delivered to the arbitrator; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent in writing of the other, nor shall the death of any party operate as a revocation thereof; and if, for the space of twenty-one days after any such dispute shall have arisen and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then, upon such failure, the party making the request and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed alone to hear and determine the matters referred, and his powers and authorities shall be the same, and his decision as effectual, as if he had been the single arbitrator appointed by both parties.

Appointment of new arbitrators.

105. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become

incapable, the party by whom such arbitrator was appointed may **Sect. 108.**
 nominate and appoint in manner herein provided for the
 appointment of an original arbitrator some other person to act in
 his place; and if, for the space of seven days after notice in
 writing from the other party for that purpose, he fail to do so,
 the remaining or other arbitrator may proceed alone, and his
 powers shall be as full and his decision as effectual as if he had
 been the single arbitrator appointed by both parties; and every
 arbitrator so to be substituted as aforesaid shall have the same
 powers and authorities as were vested in the former arbitrator at
 the time of such his death or disability as aforesaid.

106. When more than one arbitrator shall have been appointed, Appointment of
arbitrators to
supply
vacancies.
 if, before the matters referred to them are determined, either of
 such arbitrators die, or become incapable or refuse or for fourteen
 consecutive days neglect to act as arbitrator, the party by whom
 he was appointed shall, in manner herein provided for the
 appointment of an original arbitrator, appoint an arbitrator in
 his place. And where the party by which an arbitrator ought
 to be appointed in the place of the arbitrator so dying, or
 becoming incapable or refusing or neglecting to act, fails to
 make the appointment within fourteen days after being thereunto
 requested in writing by the other party, then on the application
 of such other party the Registrar may appoint an arbitrator; Appointment of
arbitrators by
Registrar to
supply vacan-
cies.
 and the arbitrator so appointed by the Registrar shall for the
 purposes of this Act be deemed to be appointed by the party so
 failing.

107. If where a single arbitrator shall have been appointed On death, &c.,
of single arbi-
trator matter to
be commenced
de novo.
 such arbitrator shall die, or become incapable or refuse or for
 fourteen consecutive days neglect to act, before he shall have
 made his award, the matters referred to him shall be determined
 by arbitration under this Act in the same manner as if such
 arbitrator had not been appointed.

108. Where more than one arbitrator shall have been appointed, Appointment o
umpire.
 such arbitrators shall, before they enter upon the matters
 referred to them, nominate and appoint by writing under their
 hands an impartial and qualified person to be their umpire, to

Sect. 109. decide on any such matters on which they shall differ, and if such umpire shall die, or become incapable to act, or refuse, or for fourteen consecutive days neglect to act they shall forthwith after such death, refusal, neglect, or disability appoint another impartial and qualified person to be their umpire in his place.

Appointment of
umpire by
Registrar.

109. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of either party to the arbitration, the Registrar may appoint an umpire, and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators.

Appointment of
umpire by
Registrar to
supply vacancy.

110. If the arbitrators fail to appoint a new umpire within seven days after notice in writing to them of the decease, incapacity, or failure to act of their former umpire, then on the application of either party to the arbitration the Registrar may appoint an umpire, and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators so failing.

Succeeding
arbitrators and
umpires to have
powers of
predecessors.

111. Every arbitrator appointed in the place of a preceding arbitrator and every umpire appointed in the place of a preceding umpire shall respectively have the like powers and authorities as his respective predecessor.

Umpire may
decide on arbi-
trators' default.

112. If, where more than one arbitrator shall have been appointed and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award ready to be delivered to the parties within such time as they agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to such arbitrators, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Solemn declara-
tion of arbi-
trators or
umpire.

113. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence

of a Justice make and subscribe the following declaration, (that Sect. 117.
is to say):—

“I, A. B., do solemnly and sincerely declare that I will
faithfully and honestly and to the best of my skill and
ability hear and determine the matters referred to me
under the provisions of ‘The Companies Act’

A.B.

Made and subscribed in the
presence of ”

See note to s. 102.

114. The said arbitrators or their umpire may call for the production of any documents or evidence in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose. Production of documents.

115. The arbitrator and the arbitrators and the umpire respectively may proceed in the business of the reference in such manner as he and they respectively shall think fit. Procedure in the arbitration

116. The arbitrator and the arbitrators and the umpire respectively may proceed in the absence of one of the parties in every case in which, after giving notice in that behalf to the other party, the arbitrator or the arbitrators or the umpire shall think fit so to proceed. Arbitration may proceed ex parte.

117. The arbitrator and the arbitrators and the umpire respectively may, if he and they respectively think fit, make several awards each on part of the matters referred instead of one award on all the matters referred, and every such award on part of the matters shall for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or, in the the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on. Several awards may be made.

Sect. 118. 118. The costs of and attending the arbitration and the award shall be in the discretion of the arbitrator and the arbitrators and the umpire respectively.

Cost of arbitration and award.

119. If and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the parties in equal shares, and in other respects the parties shall bear their own respective costs.

Payment of costs.

120. Every award of the arbitrator, or of the arbitrators, or of the umpire, if made in writing under his or their respective hand or hands and ready to be delivered to the parties within such time as they agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to the arbitrator or the arbitrators or the umpire (as the case may be), or within such extended time or times (if any) as shall have been appointed for that purpose by the arbitrator or the arbitrators or the umpire respectively by writing under his or their respective hand or hands, shall be binding and conclusive on all the parties to the reference.

Awards made in due time to bind all parties.

121. Except only as far as the parties bound by any award in accordance with this Act from time to time otherwise agree, all things by every award in accordance with this Act lawfully required to be done, omitted, or suffered, shall be done, omitted, or suffered accordingly.

Awards to be obeyed.

122. Full effect shall be given by all Courts according to their respective jurisdiction and by the parties respectively and otherwise to all agreements, references, arbitrations, and awards in accordance with this Act; and the performance or observance thereof by any company or corporation aggregate party thereto may, by the Supreme Court when such Court thinks fit, be compelled by distress infinite on the property of such companies or corporations respectively, or by any other process against such companies or corporations respectively or their respective property that the Court or any Judge thereof shall direct and when requisite frame for the purpose, and by any other party by the mode and process of the Court by which the performance or observance of awards is enforced in ordinary cases of arbitration.

Agreements, arbitrations and awards to have effect.

123. Every submission to arbitration under the provisions of **Sect. 126.** this Act may be made a rule of the Supreme Court on the application of either of the parties, and the Court may remit the whole or any of the matters to the arbitrator or arbitrators or umpire with any directions the Court may think fit.

Submission may be made a rule of Court.

124. No award made with respect to any question or dispute referred to arbitration under the provisions of this Act shall be set aside or be deemed invalid for irregularity or error in matter of form.

Not to be set aside for matter of form.

125. In matters not otherwise provided for by this Act the laws, statutes, and practice for the time being in force with respect to ordinary cases of arbitration shall, so far as the same are applicable and can be applied, extend and apply to all arbitrations under the provisions of this Act.

Matters not specially provided for to be dealt with under the general law of arbitration.

PART IV. (ss. 126—221).

WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT (a).

Preliminary.

126. The term "contributory" shall mean every person liable to contribute to the assets of a company under this Act, in the event of the same being wound up (b). It shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such proceedings (A), include any person alleged to be a contributory (c).

Meaning of contributory. 25 & 26 Vict. c. 89, s. 74.

Buckley, pp. 184, 185.

(A) (*sic.*) Eng. Act reads—"persons."

(a) As to companies under Part VI., see ss. 240—242; and as to unregistered companies, ss. 243—248. Vict. No. 3, *infra*, as to contributories in companies formed under the "Mining Partnerships Act" of 1861, 24 Vict. No. 21.

(b) s. 36; and ss. 128—130.

(c) *cf.* ss. 240 (5), 244; and see 40

By the "Bankruptcy Act, 1887," 51 Vict. No. 19, s. 109, no sequestration order shall be made against any company registered under the "Companies Act." The Court will not hear an application by an alleged contributory, because, until he admit himself to be a contributory, he has no *locus standi*: *The Continental Bank Corporation, &c.*, 15 W.R. 548; *Queen's Benefit Building Society*, 6 Ch. 816.

No sequestration order against company.

Sect. 127. 127. The liability of any person to contribute to the assets of a company under this Act, in the event of the same being wound up, shall be deemed to create a debt (A) of the nature of a specialty (a), accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the insolvency (A) (b) of any contributory to prove against his estate the estimated value of his liability to future calls as well as calls already made.

Liability of contributory.
25 & 26 Vict. c. 89, s. 78.

Buckley, pp. 185—190.

(A) Eng. Act adds—"in England and Ireland." (B) Eng. Act reads—"bankruptcy."

(a) ss. 15, 143, 185.

(b) By the "Bankruptcy Act, 1887," statute in force at the date of the passing of that Act shall include the 51 Vict. No. 19, s. 127 (2), the terms terms respectively "Bankruptcy" and "Insolvency" or "Insolvent" in any "Bankrupt."

This section is made by s. 243 to apply to unregistered companies.

Under s. 129 in the case of the bankruptcy of a contributory, his trustee or assignee represents him, and is deemed to be the contributory, although the bankrupt's name should remain on the list: *Cape Breton Co.*, 19 Ch. Div. 77.

Bankruptcy :— These sections (127, 129) refer to the insolvency (that is, bankruptcy under the present law) of a contributory, and, therefore, do not include the case where the bankruptcy precedes the winding-up: *Financial Corporation v. Lawrence*, L.R. 4 O.P. 731. Where the bankruptcy precedes the winding-up, the assignee may disclaim under s. 62 (1) of the "Bankruptcy Act, 1887;" then by s. 62 (2) the disclaimer determines from its date the interest and liabilities of the bankrupt in the shares, and any injury resulting therefrom to the company may be proved under s. 62 (7). But if the assignee do not disclaim, *quære*, whether the liability to future calls is a liability capable of being fairly estimated, and therefore capable of proof in the bankruptcy; (s. 45 (6), "Bankruptcy Act, 1887"). Where there was a winding-up after bankruptcy but before discharge, Chitty, J., held that the liability to calls in the winding-up was so capable of being estimated; and a company which had failed to carry in a proof in the bankruptcy was not allowed to put the bankrupt after his discharge upon the list of contributories: *In re Mercantile Mutual Marine Insurance Association*, 25 Ch. D. 415.

disclaimer :
proof.

If the bankruptcy be subsequent to the winding-up, the assignee may disclaim; but whether he do so or not, the company may prove for calls and liability to future calls; or if there be no call actually made before disclaimer, then the company must prove in the bankruptcy for the injury (s. 62 (7) "Bankruptcy Act, 1887"): *In re West of England Bank, s.p. Budden and Roberts*, 12 Ch. D. 288.

Contributories in case of death.
25 & 26 Vict. c. 89, s. 76.

128. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned (a) his personal representatives, heirs, and devisees shall be

liable in a due course of administration to contribute to the **Sect. 130.** assets of the company in discharge of the liability of such deceased contributory, and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly (b).

Buckley, pp. 190—193.

(a) s. 157.

(b) ss. 158, 164.

See note to Table A. (12), and s. 22.

129. If any contributory becomes insolvent (A) (a), either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such insolvent (A) (a) for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such insolvent (A) (a) or otherwise to allow to be paid out of his assets in due course of law any moneys due from such insolvent (A) (a) in respect of his liability to contribute to the assets of the company being wound-up (B).

Contributories
in case of
insolvency.
25 & 26 Vict. c.
89, s. 77.

Buckley, pp. 193, 194.

(A) Eng. Act reads—"bankrupt" for the relief of insolvent debtors and "bankruptcy."

(B) Eng. Act adds—"and for the purposes of this section any person who may have taken the benefit of any Act shall be deemed to have become bankrupt."

(a) See note (b) to s. 127.

130. If any female contributory marries, either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly.

Contributories
in case of
marriage.
25 & 26 Vict. c.
89, s. 78.

Buckley, p. 194.

But see ss. 12, 15, of the "Married Women's Property Act, 1879," 2 Ol ver, 1412, 1413.

Under s. 4 of the same Act a married woman or woman about to be married may apply to a company to be registered as the holder of fully paid up shares to which she is entitled, in her own name to her separate use; and the company will be compelled by mandamus so to register her: *E. v. Carnatic Railway Co.*, L.R. 8 Q.B. 299.

"Married
Women's
Property Act.

Sect. 131. Before the "Married Women's Property Act," it was held that a married woman might take shares on the credit of her separate estate, and that her estate would be accordingly bound; and she might be put on the list of contributories in her own right: *Mrs. Mathewman's Case*, 8 Eq. 781. If a female shareholder marry, and the company be afterwards wound-up, her husband is liable to be put upon the list: *Burlinson's Case*, 3 De G. and S. 18.

Winding-up by Court.

Under what
circumstances
companies may
be wound-up by
the Court.
25 & 26 Vict. c.
80, s. 79.

131. A company under this Act may be wound-up by the Court as hereinafter defined (a) under the following circumstances; (that is to say,)—

- (1) Whenever the company has passed a special resolution
(b) requiring the company to be wound-up by the Court:
- (2) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year:
- (3) Whenever the members are reduced in number to less than seven (c):
- (4) Whenever the company is unable to pay its debts:
- (5) Whenever the Court is of opinion that it is just and equitable that the company should be wound-up.

Buckley, pp. 194—205.

(a) s. 133.

(b) s. 83.

(c) s. 80.

Creditor's right
to winding-up
order.

This section is not compulsory, but when a creditor who cannot obtain payment of his debt comes for a winding-up order, the Court must *ex debito justitiae*, make it, if he brings the case within the Act: *In re London Suburban Bank*, 6 Ch. at p. 643. "It is not a discretionary matter with the Court when a debt is established, and not satisfied, to say whether the company shall be wound-up or not; that is to say, if there be a valid debt established, valid both at law and in equity. One does not like to say positively that no case could occur in which it would be right to refuse it; but, ordinarily speaking, it is the duty of the Court to direct the winding-up": *Bowes v. The Hops, &c. Co.*, per Lord Cranworth, 11 H.L.C. 389, at p. 402.

But a creditor is not entitled *ex debito justitiae* to a winding-up order as between himself and other creditors, though he is so entitled as between himself and the company, and the Court will have regard under ss. 144, 200 to the wishes of the creditors and contributories: *In re West Hartlepool Ironworks Co.*, 10 Ch. 618.

Sub-s. 2. "The jurisdiction to wind-up a company when it does not commence its business within a year from its incorporation or suspends its business for a year, is discretionary, and is to be exercised only when the Court is of opinion that this is a fair indication that there is no intention of carrying

on the business—if the delay or suspension is satisfactorily accounted for an order may be refused: Buckley, at p. 200; and see *In re Nylstroom Co.*, 1 Megone's Companies Cases, 169 (1889). Sect. 132.

Sub-s. 3. The machinery of the winding-up is only applicable to companies where there are numerous shareholders, and therefore, in a company where there were only seven shareholders, and no debts, the Court dismissed a shareholder's petition with costs: *In re Sea and River Marine Insurance Co.*, 2 Eq. 545; but, even in the case of a company with a small number of shareholders, a winding-up order will be made in a proper case: *In re London and County Coal Co.*, 3 Eq. 355; *In re Sanderson's Patent Association*, 12 Eq. 188.

Sub-s. 4. See s. 132.

Sub-s. 5. "The clause must be taken to mean reasons *ejusdem generis* with those previously mentioned in the Act": per Cottenham, L.C., *ex p. Spackman*, 18 L.J. Eq. 261; *In re Suburban Hotel Co.*, 2 Ch. 737; where per Cairns, L.J., at p. 741: "The fifth head would point to something either shewing insolvency, or that which is indicated in the other heads of the section, an incapability of continuing the business for some other reason."

132. A company under this Act shall be deemed to be unable to pay its debts (a):—

- (1) Whenever a creditor, by assignment or otherwise, to whom the company is indebted, at law or in equity, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor.
- (2) Whenever (A) execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor, at law or in equity, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part.
- (3) Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts (B).

Company when deemed unable to pay its debts. 25 & 26 Vict. c. 89, s. 80.

Buckley, pp. 203—207.

(A) Eng. Act adds—"in England and Ireland."

(B) In the Eng. Act this is the fourth sub-section; the third referring to Scotch cases exclusively.

(a) s. 131 (4); cf. s. 243 (4).

A winding-up order will not be made where a company *bond fide* dispute the debt. In such a case non-payment is not neglect. "Neglected" means

Sect. 133. "omitted to pay without reasonable excuse": *In re London and Paris Banking Corporation*, 19 Eq. 444.

A creditor for less than £50 may petition (*cf. British Alliance Corporation*, 9 Ch. D. 635); his right to do so rests on s. 134, by which no limit is fixed. The amount—£50—mentioned in this section is a test of inability by a company to pay its debts: *In re Milford Dock Co.*, 23 Ch. D. at p. 295.

Sub-s. 1 refers to s. 131 (4), and the proof of the company being unable to pay its debts is the fact that it has not paid the debt within twenty-one days: *per Turner, L.J., In re Catholic Publishing and Bookselling Co.*, 33 L.J. Eq. at p. 331.

Sub-s. 1 has no application to sub-s. 3; sub-ss. 1, 2 are included in sub-s. 3: *In re Globe Iron and Steel Co.*, 20 Eq. at p. 338.

Definition of
the Court.
25 & 26 Vict. c.
89, s. 81.

133. The expression "the Court" (a), as used in this part of this Act, shall mean the Supreme Court in its equity jurisdiction held and exercised by and before the Primary Judge in Equity. Provided that when, in making an order (b) for winding-up a company under this Act, the said Court directs (as it is hereby authorised to do), all subsequent proceedings for winding-up the same to be had and taken before the Chief Commissioner of Insolvent Estates (c), such Chief Commissioner (c) shall for such winding-up have all the powers of the Supreme Court in Equity, subject, however, to appeal to the said Court before the said Primary Judge (A).

(A) The Eng. Act of course differs widely in this section.

(a) *cf. ss. 145, 146.*

(b) Form 3, *infra*.

(c) By the "Bankruptcy Act, 1887," 51 Vict. No. 19, s. 127 (2), "Chief Commissioner" is to mean "Judge in Bankruptcy," and on this point the Chief Judge in Equity in *Pickering's Case*, 10 N.S.W. L.R. Eq. at p. 40, is reported to have said:—"I hope the Legislature may see fit to amend the 'Companies Act,' and make the Full Court the appellate tribunal in matters connected with the winding-up of com-

panies. When the Act was passed the insolvency jurisdiction was administered by a Chief Commissioner, and from his decisions an appeal was authorised to the Primary Judge in Equity; but since then the Chief Commissioner has been raised to the rank of a Judge of the Supreme Court of equal standing with the Primary Judge, and it is a great anomaly that I should have to sit as a Judge of appeal from the decisions of a Judge of equal standing and co-ordinate jurisdiction."

Subsequent proceedings are, however, now usually taken before the Master in Equity under R. 7.

Application for
winding-up to
be made by
petition.
25 & 26 Vict. c.
89, s. 82.

134. Any application to the Court for the winding-up of a company under this Act shall be by petition (a), and such petition (A), may be presented by the company, or by any one or more creditor or creditors, contributory or contributories (b) of the company, or by all or any of the above parties, together or separately; and every order (c) which may be made on any such

petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory. **Sect. 136.**

Buckley, pp. 209—216.

(A) Eng. Act reads "it may be presented."

(a) R.R. 1—5, *infra*.

(b) See s. 135.

(c) R.R. 6, 7. Forms 3—5.

Where a shareholder and a creditor both presented petitions, which were in the paper together, costs were allowed to the second petitioner on his solicitor stating that he was not aware, till he took the petition to the office for presentation, of the existence of the first: *In re G. F. Brooks & Co.*, W.N. (1888) 213.

A person who has obtained a garnishee order directing a company to pay money to him is not a creditor or entitled to petition: *In re Combined Weighing, &c.*, Co., W.N. (1889) 174; 43 Ch. Div. 99. **Garnishee order.**

135. No contributory of a company under this Act (A) shall be capable of presenting a petition for winding-up such company (a) unless the members of such (B) company are reduced in numbers (c) to less than seven (b), or unless the shares in (D) which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding-up (e), or have devolved upon him through the death of a former owner (F).

Contributory when not qualified to present winding-up petition.
30 & 31 Vict. c. 131, s. 40.

Provided that where a share has during the whole or any part of the six months been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee or trustees for such wife or for the contributory, such share shall for the purpose (F) of this section be deemed to have been held by and registered in the name of the contributory.

Buckley, p. 547.

(A) Eng. Act reads—"the Principal Act." (D) (*sic*) *Id.* reads—"in respect of which."

(B) *Id.* reads—"the company."

(E) *Id.* reads—"holder."

(C) (*sic*) *Id.* reads—"number."

(F) *Id.* reads—"purposes."

(a) s. 134.

(b) s. 131 (3).

(c) s. 137.

136. The Primary Judge in Equity of the Supreme Court may do in Chambers any act which the Court is hereby authorised to do.

Power of Equity Judge in Chambers.
25 & 26 Vict. c. 89, s. 83.

Buckley, p. 216.

The section of the English Act differs from this, and contains provisions for the hearing of petitions by the Vice-Warden of the Stannaries.

Sect. 137. 137. A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up (a).

Commencement
of winding-up
by the Court.
25 & 26 Vict. c.
89, s. 84.

Buckley, pp. 216, 217.

(a) As to voluntary winding-up, see s. 181.

Court may
grant injunction.
25 & 26 Vict. c.
89, s. 85.

138. The Court may, at any time after the presentation of a petition for winding-up a company under this Act, and before making an order for winding-up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceeding against the company, upon such terms as the Court thinks fit (a); the Court may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator (b) of the estate and effects of the company.

Buckley, pp. 217—231.

(a) s. 140; as to attachments, &c., as to unregistered companies, s. 245. see s. 214; under Part VI, see s. 241; (b) ss. 151—156, RE. 15, 56; Form 9.

SS. 138, 241, and 245 give to the Court, in the interval between the presentation of a petition and an order upon it, a discretionary power to restrain proceedings against the company and (as respects ss. 241 and 245) against any contributory; while ss. 140, 242, and 246 peremptorily stay proceedings after an order has been made until the leave of the Court has been obtained to proceed with them—Buckley, *ubi sup.*; and see note to s. 241.

Course to be
pursued by
Court on hear-
ing petition.
25 & 26 Vict. c.
89, s. 86.

139. Upon hearing the petition the Court may dismiss the same with or without costs, or may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just (a).

Buckley, pp. 231—237.

(a) RE. 6, 7, Forms 3—5 *infra*.

Who will be
heard.

No person has a right to be heard against a petition for winding-up a company, except creditors and contributories. And although the Court may reasonably hear other persons who have an interest in the property of the company as *amici curiæ*, yet such persons cannot appeal against the decision: *Bradford Navigation Company, In re*, 5 Ch. 600.

Costs.

The usual order as to costs which is now commonly made gives costs to the petitioner if the petition succeeds, and to the company if it fails, and further gives one set of costs to the contributories, and one to the creditors who support the winning side. If the petition succeeds, these costs are given out of the company's estate; if it fails, they are given against the petitioner—Buckley, p. 233. And

In re Paper Bottle Co., 40 Ch. D. 52, North, J., following the *North Brazilian Sugar Factories*, W.N. (1887) 3, allowed a separate set of costs to each set of creditors and each set of shareholders appearing whether to support or oppose the petition, where the petition was withdrawn; but *In re Criterion Gold Mining Co.*, 41 Ch. D. 146, Kay, J., in a similar case allowed but one set of costs to shareholders appearing to oppose the petition, and held that there was no such general rule as above stated, but that the Court, in the exercise of its discretion, will have regard to the circumstances of each particular case. And the costs of the petition and winding-up order will be ordered to be paid without any possible question of set-off being allowed to interfere with such payment: *In re Equestrian, &c., Co.*, 1 Megone's Companies Cases, 115 (1888).

Sect. 142.

Petitioner's costs are a first charge upon the estate, and must be paid in full in priority to the costs of the official liquidator: *In re Audley Hall, &c., Co.*, 6 Eq. 245; but this rule only applies to petitioner's costs.

It would appear from Buckley, p. 214, citing *Norton Iron Co.*, 47 L.J. (Ch.) 9, that it is competent for a creditor to appear and insist on a petition being disposed of in its due course; but North, J., allowed a petition to stand over, and held that a creditor was not entitled as a matter of right to have the petition heard then or dismissed: *In re Margate Hotel Co.*, W.N. (1888) 73.

Where an order has been improperly or irregularly obtained, it may be discharged on motion or petition by the Judge who made it; as, e.g., where material facts were concealed: *s.p. Barnett*, 1 De G. & Sm. 744; or where a voluntary winding-up was invalid and a supervision order had been made on it: *In re Patent Floor Cloth Co.*, 8 Eq. 664.

Application to vary or discharge.

140. When an order has been made for winding-up a company under this Act no suit, action, or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court and subject to such terms as the Court may impose (a).

Actions to be stayed after order for winding up.
25 & 26 Vict. c. 89, s. 87.

Buckley, pp. 237—242.

(a) ss. 142, 214, 242, 246. See notes to ss. 138, 241.

141. When an order has been made for winding-up a company under this Act, a copy of such order shall forthwith be forwarded by the company to the Registrar of Joint Stock Companies, who shall make a minute thereof in his books relating to the company.

Copy of order to be forwarded to the Registrar.
25 & 26 Vict. c. 89, s. 88.

142. The Court may at any time after an order has been made for winding-up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying

Power of Court to stay proceedings.
25 & 26 Vict. c. 89, s. 89.

Sect. 143. the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Buckley, pp. 242, 243.

Cf. ss. 138, 140, 214, 241, 242, 245, 246.

See note to s. 126, as to an alleged contributory.

Reconstruction. This section is commonly used for reconstruction purposes where, for instance, the company wants to raise further capital to pay its debts and go on again. An order is taken under this section staying all proceedings in the winding-up, except for the purposes of ascertaining and satisfying the debts, and directing meetings of the members to vote the new capital, elect a new board of directors, and so on: cf. Buckley, p. 243.

The Court has power under this section and section 189 to order that proceedings under a voluntary winding-up shall be stayed: *per* Chitty, J., *Steamship Titian Co.*, W.N. (1888) 17; cf. *ib.* p. 166.

Effect of order
on share capital
of company
limited by
guarantee.
25 & 26 Vict. c.
89, s. 80.

143. When an order has been made for winding-up a company limited by guarantee, and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company and to be a debt (A) of the nature of a specialty (a) due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

Buckley, pp. 243, 244.

(A) Eng. Act adds—"in England and Ireland."

(a) ss. 127, 185.

Court may have
regard to wishes
of creditors or
contributories.
25 & 26 Vict. c.
89, s. 91.

144. The Court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings (a) of the creditors or contributories to be summoned, held, and conducted in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. In the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company (b).

Buckley, pp. 244—247, where the cases in regard to winding-up petitions are collected.

(a) R.R. 43—45, *infra*.

(b) And see s. 200; cf. ss. 212, 131,

to which this section applies.

This section gives the Court complete discretion to refuse an order, or to direct the petition to stand over upon terms, and to exercise its discretion with reference to all the surrounding circumstances : Buckley, *ubi sup.* **Sect. 148.**

145. When the Court makes an order for winding-up a company, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court held under the "District Courts Act" of 1858 and the Acts amending the same ; and thereupon such District Court shall, for the purpose of winding-up the company, be deemed to be the Court (a) within the meaning of this Act, and shall have for the purpose of such winding-up all the jurisdiction and powers of the Court.

See Eng. Act, 30 & 31 Vict. c. 131, s. 41 ; Buckley, pp. 547, 548.

(a) *Cf.* s. 133.

146. If, during the progress of a winding-up, it is made to appear to the Court that the same could be more conveniently prosecuted in any other District Court, it shall be competent for the Court to transfer the same to such other District Court, and thereupon the winding-up shall proceed in such other District Court.

See Eng. Act, 30 & 31 Vict. c. 131, s. 42.

Buckley, p. 548.

147. If any party in a winding-up under this Act is dissatisfied with a determination or direction of a District Court Judge on any matter in such winding-up, such party may appeal from the same to the Court. Provided that such party shall, within thirty days after such determination or direction, give notice of such appeal to the other party or his attorney, and also deposit with the Registrar of the District Court the sum of ten pounds as security for the costs of the appeal ; and the Court may make such final or other decree or order as it thinks fit, and may also make such order with respect to the costs of the said appeal as such Court may think proper, and such orders shall be final.

See Eng. Act, 30 & 31 Vict. c. 131, s. 43.

Buckley, p. 548.

148. The District Court Judges shall frame the rules and orders for regulating the practice of the District Court under this Act, and forms of proceedings therein, and from time to time may

Winding-up may be referred to District Court.

As to transfer of suit from one District Court to another.

Parties aggrieved may appeal.

Powers to frame rules and orders under section 102 of the District Courts Act of 1858.

Sect. 149. amend such rules, orders, and forms ; and such rules, orders, and forms, or amended rules, orders, and forms, certified under the hands of such Judges or of any three or more of them, shall be submitted to the Primary Judge in Equity, who may allow or disallow or alter the same, and so from time to time ; and the rules, orders, and forms, or amended rules, orders, and forms so allowed or altered shall from a day to be named by the Primary Judge in Equity be in force in every District Court.

See Eng. Act, 30 & 31 Vict. c. 131, s. 44.

Buckley, p. 548.

No rules or orders appear to have been made under this section.

Scale of costs to be framed by the Judges.

149. The District Court Judges mentioned in the foregoing section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings in a winding-up under this Act, and from time to time to amend such scale ; and such scale or amended scale certified under the hands of such Judges or any three or more of them shall be submitted to the Primary Judge in Equity, who from time to time may allow, disallow, or alter the same ; and the scale or amended scale so allowed or altered shall from a day to be named by the Primary Judge in Equity be in force in every District Court.

See Eng. Act, 30 & 31 Vict. c. 131, s. 45 ; Buckley, p. 549.

Remuneration of registrars and bailiffs of District Courts in winding-up of companies.

150. The registrars of the District Courts shall be remunerated for the duties to be performed by them under this Act, by receiving for their own use, such fees as may be from time to time authorised to be taken by any orders to be made by the District Court Judges or any three or more of them, with the consent of the Primary Judge in Equity ; and the District Court Judges are hereby authorised and empowered, with such consent as aforesaid, from time to time to make such order as aforesaid. Provided that it shall be lawful for the said District Court Judges, with the like consent as aforesaid, by an order to direct that, after the date named in the order, any registrar or bailiff shall, in lieu of receiving such fees, be paid such fixed or fluctuating allowance as may in each case be thought just ; and after such date the said

fees shall be accounted for and paid over by such registrar or bailiff in such manner as may be directed in the order. Sect. 151.

See Eng. Act, 30 & 31 Vict. c. 181, s. 46; Buckley, p. 549.

Official Liquidators.

151. For the purpose of conducting the proceedings in winding-up a company, and assisting the Court or other authority in by or under which the company is being wound-up (A) therein, there may be appointed by the Court by which the order for winding it up is made (B) a person or persons to be called an official liquidator or official liquidators (a); and such Court (c) may appoint such person or persons, either provisionally (b) or otherwise, as it thinks fit, to the office of official liquidator or official liquidators (D); In all cases if more persons than one are appointed to the office of official liquidator, such (E) Court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons, such (F) Court may also determine whether any and what security (G) is to be given by any official liquidator on his appointment: If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of such (H) Court.

Appointment
official liqui-
dator.
25 & 26 Vict. c.
59, s. 92.

Buckley, pp. 248—252.

(A) Eng. Acts omits—"or other authority—wound up."
(B) *Id.* omits—"by the Court—is made."

(C) *Id.* adds—"having jurisdiction."
(D) *Id.* omits—"or official liquidators."
(E) *Id.* reads—"the Court."

(a) R.R. 8—19, *infra*; and see s. 184 as to appointment of official liquidator in a voluntary winding-up; ss. 201—203, as to such appointment in winding-up subject to supervision; see also s. 200, under which the wishes of creditors and contributories are to be regarded.

(b) s. 138, *sub. fn.*, and note in Buckley, p. 230, and s. 203, where a supervision order is succeeded by a compulsory order; *infra*, R.R. 15, 56, Form 9.
(c) E. 10, *infra*.

The appointment of an official liquidator is a question for the discretion of the judge by whom the appointment is made, *per Cairns, L.J., In re London Quays and Warehouses Co.*, 3 Ch. at p. 401; and where a judge in the exercise of his discretion has appointed an official liquidator, the Court of Appeal will not disturb the appointment, *In re International Contract Co.*, 1 Ch. 523; *In re London, &c., Bank*, *ib.* 525; if there are new facts, or if the judge has been deceived, and has made an improper appointment, application should be made to him to reconsider the case; *per Chelmsford, L.C.*, 1 Ch. at p. 524: *secus*, where in such appointment a question of principle is involved, an appeal may

Sect. 152. be sustained; *per Giffard, L.J., Perry v. Oriental Hotels Co.*, at p. 433 (a case of receiver). The appointment may be made at the hearing of the petition for winding-up, 1 Ch. 525, although the usual practice is to have a reference to Chambers, R. 8, *infra*. "The Court may appoint a provisional liquidator at any time after the presentation of a petition for winding-up, and before the first appointment of liquidators;" s. 188, *q.v.*, and R. 15, *infra*.

The person nominated by the petitioner will generally be appointed liquidator: *General Provident Insurance Co.*, 19 L.T. 45.

Resignation—
removal—com-
pensation.
25 & 26 Vict. c.
89, s. 93.

152. Any official liquidator may resign or be removed by the Court on due cause shown (a); and any vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court (b). There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs (c).

Buckley, pp. 252, 253.

- (a) *Cf.* s. 192, and note thereon. the costs of the winding-up must first
(b) *Cf.* ss. 192, 201; see R. 16. be paid in full, before the official
(c) *Cf.* s. 184 (8); see R. 18, *infra*; liquidator will be entitled to receive
under s. 168, where the assets are anything out of the assets by way of
insufficient to satisfy the liabilities, remuneration: *Cf.* Buckley, p. 277.

There is no fixed scale of remuneration of official liquidators adopted by the Court here; but the Primary Judge fixes the amount of remuneration according to the circumstances of the winding-up.

Style and duties
of official liqui-
dator.
25 & 26 Vict. c.
89, s. 94.

153. The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he is or they are appointed and not by his or their individual name or names. He or they shall take into his or their custody, or under his or their control, all the property, effects, and choses (A) in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the Court (a).

Buckley, pp. 253—258.

(A) Eng. Act reads—"things in action."

(a) In the case of an unregistered can be obtained on an *ex parte* motion. company, under s. 247, a vesting order

"The moment that the winding-up takes place, the whole administration is carried on with a view to the payment of the debts of the creditors, and in the first instance to payment *pari passu*" (s. 184, sub-s. (1), *q.v.* see also ss. 157,

160), *per* Selborne, L.C., *Black & Co.'s Case*, 8 Ch. at p. 262. The official liquidator is a statutory trustee for the equal and ratable payment of all the creditors, *S.C.*; the Statute of Limitations, therefore, will not run against a creditor, and he will be entitled to prove, not disturbing former dividends: *In re General Rolling Stock Co.*, 7 Ch. 646; see s. 166, and note thereto, as to a creditor who has not proved within the time fixed by the Court.

As to the official liquidator's costs, see Buckley, pp. 255—258; 262, 312.

In a winding-up the liquidator acts not only for creditors, but for contributories, and for the company also: *In re Marine Mansions Co.*, 4 Eq. at p. 610. The official liquidator is in the position of a receiver or manager of partnership assets appointed by the Court. Where he represents the company in a suit against strangers, or in a proceeding in the winding-up against an alleged contributory, the adverse party has a right to the same discovery from him as from an ordinary litigant. But where it is a question which does not concern the company, as, for instance, whether a past shareholder is to be placed on list B, the official liquidator is only bound to afford equal facilities to the shareholders and the creditors, but not to make discovery at the instance of either party: *Gooch's Case*, 7 Ch. 207. In an action on behalf of shareholders against the directors, the plaintiff—by analogy to the rule that a *cestui que trust* is entitled to see cases submitted and opinions obtained by the trustee for the purposes of the trust, and paid for out of the trust estate—is entitled to production of communications relating to the subject matter of the action, between the company and its professional advisers, when such communications have been paid for out of the funds of the company: *Gourand v. Edison Gower Bell, &c., Co.*, W.N. (1888) 82, affirmed C.A., *ib.* 94.

Sect. 154.

Liquidator,
trustee for
creditors.

Liquidators'
costs.

Discovery from
official liqui-
dator.

154. The official liquidator shall have power, with the sanction of the Court (a), to do the following things:—

Powers of
official liqui-
dator.
25 & 26 Vict. c.
89, s. 95.

To bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company (b):

To carry on the business of the company, so far as may be necessary for the beneficial winding-up of same (c):

To sell the real and personal (A) property, effects, and choses (B) in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels (d):

To do all acts, and to execute, in the name and on behalf of the company, all deeds, receipts, agreements of reference or submissions to arbitration (e) and other documents, and for that purpose to use, when necessary, the company's seal:

Sect. 154.

To prove, rank, claim, and draw a dividend in the matter of the (D) insolvency (E) of any contributory, for any balance (F) against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of (D) insolvency (E) as a separate debt due from such (F) insolvent, and ratably with the other separate creditors :

To draw, accept, make, and indorse any bill of exchange or promissory-note in the name and on behalf of the company (F) also to raise upon the security of the assets of the company, from time to time, any requisite sum or sums of money ; and the drawing, accepting, making, or indorsing of every such bill of exchange or promissory-note as aforesaid on behalf of the company, shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or indorsed by or on behalf of such company in the course of carrying on the business thereof :

To take out, if necessary, in his official name, letters of administration to any deceased contributory (G), and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company ; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself :

To do and execute all such other things as may be necessary for winding-up the affairs of the company and distributing its assets (H).

Buckley, pp. 258—262.

(A) Eng. Act adds—"and heritable and movable."

(B) *Id.* reads—"things in action."

(C) *Id.* omits—"agreements—arbi-

tration."

(d) *Id.* inserts—"bankruptcy or."

(x) *Id.* adds—"or sequestration."

(r) *Id.* inserts—"bankruptcy or."

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(a) s. 155; RE. 46—48, *infra*.

(b) Proceedings in the winding-up may be taken by the liquidator without leave. As to vesting order in case of unregistered company, see s. 217.

(c) s. 204; *cf.* also s. 182.

(d) s. 212; R. 31, *infra*.

(e) See s. 127 *sub. fin.*, and note thereto.

(f) *Cf.* s. 79; R. 46, *infra*.

(g) See s. 138; s. 161.

(h) See further, ss. 210—213.

Liquidators under a winding-up, subject to supervision, have the same powers as are given by this section: ss. 184 (7), 202; and so in the winding-up of an unregistered company, s. 248.

Cf. generally with this section; ss. 63, 64, "Bankruptcy Act, 1887," which deal with the powers exercisable by an official assignee or trustee under nearly the same circumstances.

The Court cannot allow the carrying on of the business of a company in liquidation where it is not necessary, that is to say, in a mercantile sense, highly expedient, but is done with a view to benefit the shareholders and reconstruct the company: *In re Wreck Co.*, 15 Ch. Div. 353. Carrying on business.

As to a sale of property by two out of six liquidators, see *In re Ebsworth & Tidy's Contract*, 42 Ch. Div. 23.

When in the winding-up an order has been made in Chambers confirming a contract for the sale and purchase of outstanding assets of the company, such order will not be discharged on the mere ground that a larger price than that contained in the contract is afterwards offered by other parties: *Oriental Bank Corp.*, W.N. (1887) 109; affirmed C.A. 3. 112, the L.J.J. declining to interfere with the discretion of the judges in the Court below.

155. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and where an official liquidator is provisionally appointed (a) may limit and restrict (b) his powers by the order appointing him.

Discretion of official liquidator. 25 & 26 Vict. c. 89, s. 96.

Buckley, p. 262.

(a) s. 138.

(b) *Cf.* s. 202.

For form of order, see No. 78 (A), *infra*. As to compromises, see s. 211.

156. The official liquidator may, with the sanction of the Court, appoint a solicitor (A) to assist him in the performance of his duties (a). Solicitor to official liquidator. 25 & 26 Vict. c. 89, s. 97.

(A) Eng. Act adds—"or law agent."

(a) R. 83, Form 12, *infra*.

The official liquidator is not personally responsible to the solicitor for the costs of the winding-up: *In re Anglo-Moravian, &c., Railway Co., ex p. Watkin*, 1 Ch. Div. 180.

Sect. 157.*Ordinary Powers of Court.*

Order for collection of assets.
25 & 26 Vict. c.
89, s. 96.

157. As soon as may be (a) after making an order for winding-up the company, the Court shall settle a list of contributories (b), with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act (c), and shall cause the assets of the company to be collected, and applied in discharge of its liabilities (d).

Buckley, pp. 262—266.

(a) s. 36.

(b) *ib.*; R.R. 28—30, *infra*.

(c) s. 33.

(d) s. 153, and *cf.* s. 184.

As to debts provable against the company in the winding-up and the payment of interest, see s. 209.

For contributories' costs, see Buckley, p. 264-5.

As to the list of contributories, see s. 36, and note thereto.

Rectification of register.

The power of the Court to rectify the register will be exercised in accordance with the powers given by s. 33, and on motion by some person interested. Application on the part of the company should be made in the name of the company, not in that of the official liquidator: *e.p. Kintrea*, 5 Ch. 95. The costs of a contest by a person disputing his liability as a contributory and failing, must, as a general rule, be paid by such contributory: *Gower's Case*, 6 Eq. 77. But in a test case costs of all parties may be given out of the estate: *Walker's Case*, 2 Eq. 554. If an alleged contributory successfully dispute his liability he will in general receive his costs out of the estate: *Nation's Case*, 3 Eq. 77.

Provision as to representative contributories.
25 & 26 Vict. c.
89, s. 96.

158. In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the Court thinks fit (a).

(a) s. 128; R.R. 28—30, *infra*.

Power of Court to require delivery of property.
25 & 26 Vict. c.
89 s. 100.

159. The Court may, at any time after making an order for winding-up a company, require any contributory for the time being settled on the list of contributories, or any (A) trustee, receiver, banker, or agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the official

liquidator (a), any sum or balance (b), books, papers (c), estate **Sect. 160.**
or effects which happen to be in his hands for the time being,
and to which the company is *primâ facie* entitled (d).

Buckley, pp. 266, 267.

(A) Eng. Act omits—"or any"

(a) s. 162.

(c) Cf. s. 173.

(b) Cf. s. 216.

(d) Form 13, *infra*.

This section applies only to contributories and officers of the company, and not to other persons: *United English and Scottish Insurance Co., e.p. Hawkins*, 3 Ch. 787.

160. The Court may, at any time after making an order for winding-up the company, make an order (a) on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents to the company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this part of this Act (b); and it may, in making such order when the company is not limited, allow to such contributory by way of set-off any moneys due to him or the estate which he represents from the company, on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit (c).

Power of Court to order payment of debts by contributory.
25 & 26 Vict. c. 89, s. 101.

Provided that when all the creditors of any company whether limited or unlimited are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls (d).

Buckley, pp. 267-271, on the question of set-off.

(a) Form 13, *infra*.

(c) s. 39, as to set-off to director with unlimited liability.

(b) s. 161.

(d) s. 36 (7).

The section gives a summary process to enforce payment of moneys not being Set-off. calls made in the winding-up due to the company from any person who has been settled upon the list of contributories. In the case of a limited company, a contributory cannot set-off a debt due to him against calls made either before or after the winding-up: *In re Whitehouse & Co.*, 9 Ch. D. 595. In the case of an unlimited company, the section allows set-off of moneys due to the

Sect. 161. contributory against moneys due from the contributory which he can be ordered to pay under this section, that is to say, debts, and calls made before winding-up. As between the contributories themselves, the proviso allows set-off.

As to a person other than a contributory, see Buckley, p. 336.

Power of Court
to make calls.
25 & 26 Vict. c.
89, s. 102.

161. The Court may, at any time after making an order for winding-up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls (a) on and order payment thereof by all or any of the contributories, for the time being settled on the list of contributories to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same (b).

Buckley, pp. 271, 272.

(a) s. 177 ; RR. 32—34, *infra* ; as to (b) Cf. s. 184 (9).
interest on calls, see Buckley, p. 186.

Compare with this section, s. 36.

A Court of Appeal will be very slow to interfere with the discretion of the judge who has ordered a call as to its amount : *In re Barnard's Banking Co.*, 36 L.J. Ch. 215.

Persons on the list of shareholders, asserting their right to be removed from that list, cannot resist the making of a call on that ground, but should ask to have its operation suspended against themselves till the question is tried : *ib.*

Power of Court
to order pay-
ment into bank.
25 & 26 Vict. c.
89, s. 103.

162. The Court may order any contributory, purchaser, or other person from whom money is due to the company to pay the same into a bank to be named by the Court (A) to the account of the official liquidator instead of to the official liquidator, and such order may be enforced (a) in the same manner as if it had directed payment to the official liquidator (b).

(A) Eng. Act—"the Bank of England or any branch thereof."

(a) E. 37, *infra*.

(b) s. 159 ; *infra*, RR. 11, 31, 35—40.

Notwithstanding this section, the official liquidator, if he desire to enforce the order by writ of *fi. fa.*, must proceed under Rule 37, *infra*, q.v., and obtain an order for payment of the amount to himself.

As to enforcing orders under this Act, see s. 177, *infra*.

A "balance order" in respect of calls made on a contributory in the winding-up of a company is not a "final judgment" within the meaning of sub-s. 1 (g) of s. 4 of the "Bankruptcy Act, 1883" (N.S.W. "Bankruptcy Act, 1887," sub-s. 1 (g) of s. 4), and a bankruptcy notice cannot be issued in respect of such an order: *e.p. Grimwade*, 17 Q.B. Div. 357, following *e.p. Whinney*, 13 Q.B.D. 476. **Sect. 166.**

163. All moneys, bills, notes, and other securities paid and delivered into such bank (A) in the event of a company being wound-up by the Court shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out of the same as the Court may direct (a). Regulation of account with Court. 25 & 26 Vict. c. 89, s. 104.

(A) Eng. Act—"the Bank of England or any branch thereof."

(a) RR. 35—42, *infra*.

164. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory, or either of such estates, and of compelling payment thereof of the moneys due (a). Provision in case of representative contributory not making payment ordered. 25 & 26 Vict. c. 89, s. 105.

Buckley, p. 272, and see *id.* pp. 191—193.

(a) ss. 128, 154.

165. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order (a), be conclusive evidence that the moneys, (if any), thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever (A). Order conclusive evidence. 25 & 26 Vict. c. 89, s. 106.

(A) Eng. Act adds—"with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made." See ss. 164, 158, 128.

(a) s. 178.

166. The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts Court may exclude creditors not proving within certain time.

Sect. 167. or claims, or to be excluded from the benefit of any distribution made before such debts are proved (a).

25 & 26 Vict. c.
89, s. 107.

Buckley, p. 273.

(a) s. 209; RR. 20—27, *infra*; and see note to s. 153.

A creditor may come in and prove at any time, subject to the penalty in the section: *In re Kit Hill Tunnel, ex p. Williams*, 16 Ch. D. 590; *semble*, until the company is dissolved under s. 169.

Court to adjust
rights of con-
tributories.
25 & 26 Vict. c.
89, s. 108.

167. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Buckley, pp. 274—277.

As to the payment of a preferential dividend under the articles of association, see s. 56 (3); and see s. 82.

Equalisation of
shares.

Subject to any provisions in the articles, holders of fully paid-up shares are entitled to have calls made upon the holders of partly paid-up shares in order to equalise the amounts paid on the shares; and if there are surplus assets, to have them applied in the first place in reducing the amount paid on their shares to an amount equal to that paid on the partly paid-up shares: *Provision Merchants' Co.*, 26 L.T. 862; *ex p. Maude*, 6 Ch. 51.

And see *In re Exchange Drapery Co.*, 38 Ch. D. 171.

Court to order
costs.
25 & 26 Vict. c.
89, s. 110.

168. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding-up any company in such order or priority as the Court thinks just (a).

Buckley, pp. 277—279.

(a) *Cf.* s. 195; the same principle would apply here.

See Buckley, p. 227, as to costs incurred in litigation by a company in liquidation; and s. 139 and note thereto, as to the costs of the winding-up petition; and note to s. 153.

As to the remuneration of official liquidator, see note to s. 152.

Solicitor's lien.

A solicitor is entitled to a lien for his costs on a fund recovered in the winding-up through his instrumentality: *In re Massey*, 9 Eq. 367.

Costs, priority.

On an order for payment of costs out of assets, as in favour of a person who has successfully resisted being put upon the list, the person to whom the costs are payable is entitled to be paid immediately out of the assets, before costs of realisation: *In re Dominion of Canada Plumbago Co.*, 37 Ch. Div. 33.

Dissolution of
company.
25 & 26 Vict. c.
89, s. 111.

169. When the affairs of the company have been completely wound-up, the Court shall make an order that the company

be dissolved from the date of such order, and the company shall be dissolved accordingly (a). **Sect. 173.**

Buckley, p. 280.

(a) R.R. 62, 63. Forms 54, 55, *infra*; voluntary winding-up. As to disposal of Cf. ss. 170, 171; and see s. 194, as to books, &c., see s. 206.

170. Any order (a) so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company. Registrar to make minute of dissolution. 25 & 26 Vict. c. 89, s. 112.

(a) Cf. ss. 169, 171; R.R. 62, 63. Forms 54, 55, *infra*.

171. If the official liquidator makes default in reporting to the Registrar, in the case of a company being wound-up by the Court, the order (a) that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default. Penalty on not reporting dissolution. 25 & 26 Vict. c. 89, s. 113.

(a) Cf. ss. 169, 170; R.R. 62, 63. Forms 54, 55, *infra*.

172. Any petition for winding-up a company by the Court under this Act shall constitute a *lis pendens*. Petition to be *lis pendens*. 25 & 26 Vict. c. 89, s. 114.

Buckley, pp. 280, 281.

This section is rendered superfluous by s. 204, as regards the property (including the real estate) of a company; see s. 175, as to the removal, &c., of his goods by a contributory.

Extraordinary powers of Court.

173. The Court may, after it has made an order for winding-up the company, summon (a) before it any officer (b) of the company or person known or suspected to have in his possession any of the estate or effects (b) of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects (c) of the company; and the Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents (b) in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting Power of Court to summon persons suspected of having property of the company. 25 & 26 Vict. c. 89, s. 115.

Sect. 174. and allowed by it), the Court may cause such person to be apprehended, and brought before the Court for examination (c); nevertheless, in cases where any person claims any lien on papers, deeds or writings or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Buckley, pp. 281—287.

(a) Form 53, *infra*.

(b) Cf. ss. 159, 216.

(c) Cf. s. 174.

As to solicitor's lien, see Buckley, pp. 278, 286.

By summons.

Order on application of liquidator:—

A person is brought before the Court under this section by summons, in accordance with Form 53, and not by ordinary subpoena: *In re Gold Co.*, 12 Ch. Div. 77; application is *ex parte*, and, when made by the liquidator, not made on affidavit, *ib.*; a contributory, however, who may also set the Court in motion, must come on notice to the liquidator; and the Court will be slow to interfere on appeal with the discretion of the Primary Judge who has ordered an examination, *ib.*; even if the party ordered to attend has any *locus standi* to appeal, which it appears by the same case he has not. A plaintiff in an action against the company which is being continued, cannot, therefore, escape examination, or refuse to answer questions relating to the matter in dispute: *e.p. Bateman*, 15 L.T. 263, 495. The witness is entitled to have solicitor and counsel present: *In re Breach Loading Armoury Co.*, 4 Eq. 453.

of contributory.

The powers given by this section for the examination of directors were given for the more beneficial winding-up of the company, and ought not to be used merely to give a plaintiff, in an action to enforce his individual right, undue means of discovery: *In re Imperial Continental Water Corp.*, 33 Ch. Div. 314; *cf. In re London, &c., Paper Mills Co.*, W.N. (1888) 63, where an order under this section obtained by a contributory for the purpose of examining a director against whom he had commenced an action was discharged.

Examination before the Court.

25 & 26 Vict. c. 89, s. 117.

174. The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid (a) concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

(a) s. 173.

Power to arrest absconding contributory. 25 & 26 Vict. c. 89, s. 118.

175. The Court may, at any time before or after it has made an order for winding-up a company, upon proof being given that there is probable cause for believing that any contributory (a) to such company is about to quit the colony (A) or otherwise abscond, or to remove or conceal any of his goods or chattels,

for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods, and chattels (b) to be seized, and him and them to be safely kept until such time as the Court may order. Sect. 178.

Buckley, pp. 288, 289.

(A) Eng. Act reads—"United Kingdom."

(a) s. 126.

this section the goods and chattels of

(b) See also s. 172 and s. 204. Under the contributory only are affected.

176. Any powers by this Act conferred on the Court shall be deemed to be in addition to and not in restriction of any other powers (A) subsisting, either at law or in equity, of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company, for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly. Powers of Court cumulative.
25 & 26 Vict. c. 89, s. 119.

(A) English Act reads—"power subsisting."

Enforcement of and Appeal from Orders.

177. All orders made by the Court under this Act may be enforced in the same manner in which orders of the Supreme Court made in any suit pending therein in its equity jurisdiction (a) may be enforced. Power to enforce orders.
25 & 26 Vict. c. 89, s. 120.

The Eng. Act adds provisions as to the Vice-Warden of the Stannaries.

(a) "Equity Act, 1880," R.R. 176, orders in the equity jurisdiction: *q.v.*
177 (with which *cf.* R. 167) provide the *Walker's Practice in Equity*, p. 138.
process for enforcing decrees and

178. Rehearings of and appeals from any order or decision made or given in the matter of the winding-up of a company by the Court constituted or consisting of the said Primary Judge in Equity (A) may be had, and when made or had shall be made or had within the same time and (B) in the same manner and subject to the same conditions in and subject to which appeals may be had Appeals from orders.
25 & 26 Vict. c. 89, s. 124.

Sect. 179. from any order or decision of the said Primary Judge (c) in cases within his (d) ordinary jurisdiction (e).

Buckley, pp. 291—296.

(A) Eng. Act reads—"any Court having jurisdiction under this Act." (D) *Id.* "its."
 (B) *Id.* omits "and when—time and." (E) *Id.* further enacts the amount of notice to be given, and makes certain provisions in the case of the Stannaries.
 (C) *Id.* "same Court."

See ss. 70—79, "Equity Act, 1880," Walker, pp. 59—67. RR. 183—185, *ib.* pp. 140, 141; but by R. 60, Reg. Gen., Sept., 1889, notices under RR. 183, 184, may be signed by one counsel.

Rehearing in the corresponding Eug. section has been held to mean by way of appeal, and probably does so in the N.S.W. section, as by s. 71 "Equity Act, 1880," all appeals are by way of rehearing.

Affidavits, &c., may be sworn before certain persons.
 25 & 26 Vict. c. 89, s. 128.

179. Any affidavit, affirmation, or declaration required to be sworn or made under the provisions or for the purposes of this part of this Act may be lawfully sworn or made in Great Britain or Ireland, or in any colony, island, plantation or place under the dominion of Her Majesty (A), before any Court, Judge, or person lawfully authorised to take and receive affidavits, affirmations, or declarations, or before any of Her Majesty's Consuls or Vice-Consuls, in any foreign parts out of Her Majesty's dominions, and all Court (B) Judges, Justices, Commissioners, and persons acting judicially, shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul, or Vice-Consul attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this part of this Act.

(A) Eng. Act adds—"in foreign parts." (B) *Sic.* Eng. Act "Courts."

Voluntary winding-up of Company.

Circumstances under which company may be wound up voluntarily.
 25 & 26 Vict. c. 89, s. 129.

180. A company under this Act (a) may be wound-up voluntarily—

- (1) Whenever the period, (if any), fixed for the duration of the company by the articles of association expires, or whenever the event, (if any), occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound-up voluntarily :

(2) Whenever the company has passed a special resolution Sect. 182.

(b) requiring the company to be wound-up voluntarily :

(3) Whenever the company has passed an extraordinary resolution (c) to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind-up the same :

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined (b).

Buckley, pp. 298—300.

(a) See s. 243 (2) as to an unregistered company, and note in Buckley, pp. 406—411.

(b) ss. 83, 85, as to registration, and s. 183 as to advertisement of special resolutions.

(c) See also ss. 83, 183.

On the question of notice, see s. 83 and note thereto.

Whether the Court has jurisdiction to interfere to restrain a company from passing resolutions for a voluntary winding-up, at the instance of persons not shareholders, *quære*: *British Water Gas Syndicate v. Notts, &c., Water Gas Co.*, W.N. (1889) 204.

181. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising such winding-up (a).

Commencement of voluntary winding-up. 25 & 26 Vict. c. 89, s. 130.

Buckley, pp. 300, 301.

(a) s. 137, as to winding-up by the Court.

Where a petition was presented for the compulsory winding-up of a company, and the same day a provisional liquidator was appointed, and afterwards the company passed an extraordinary resolution to wind-up voluntarily, it was held that the winding-up commenced from the passing of the resolution, not from the appointment of the provisional liquidator, and that the Court had no power to alter the date of commencement: *In re West Cumberland Iron and Steel Co.*, 40 Ch. D. 361; and see *In re Dry Docks Corporation of London*, 39 Ch. Div. 306.

As to commencement of winding-up under supervision, see s. 198; and where a compulsory order supersedes the supervision order, see s. 203.

182. Whenever a company is wound-up voluntarily, the company shall, from the date of the commencement of such winding-up (a), cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof (b), and

Effect of voluntary winding-up. 25 & 26 Vict. c. 89, s. 131.

Sect. 183. all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the *status* of the members of the company, taking place after the commencement of such winding-up, shall be void (c), but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound-up (d).

Buckley, pp. 301, 302.

(a) s. 181.

(b) Cf. s. 154, and note thereon.

(c) Cf. s. 204.

(d) Cf. s. 169.

As to the company's power to carry on business, see s. 154 and note, and see *Hire Purchase Furnishing Co. v. Richens*, 20 Q.B. Div. 387. If the winding-up is by special resolution, it commences from the date of the confirming resolution, s. 181; and a transfer made and registered between the dates of the first and second resolutions will be valid: *Hornby's Case*, 19 L.T. 237. But as to transfer to the liquidators, see *Vining's Case*, 6 Ch. 96.

An amalgamation after winding-up should apparently be under s. 212, and cannot be otherwise carried out: *Drew's Case*, 16 L.T. 657.

Notice of resolution to wind up voluntarily.
25 & 26 Vict. c.
89, s. 132.

183. Notice of any special resolution or extraordinary resolution passed for winding-up a company voluntarily shall be given by advertisement in the Government (A) Gazette.

(A) Eng. Act here substitutes— according to the country in which the “London,” “Edinburgh,” “Dublin,” company is registered.

Cf. s. 85.

Consequences of voluntary winding up.
25 & 26 Vict. c.
89, s. 133.

184. The following consequences shall ensue upon the voluntary winding-up of a company:—

- (1) The property of the company shall be applied in satisfaction of its liabilities *pari passu* (a), and subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company (b):
- (2) Liquidators shall be appointed for the purpose of winding-up the affairs of the company and distributing the property (c):
- (3) The company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him (d):

- (4) If one person only is appointed, all the provisions Sect. 184. herein contained in reference to several liquidators shall apply to him :
- (5) Upon the appointment of liquidators all the powers of the directors shall cease (e) except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers :
- (6) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two :
- (7) The liquidators may, without the sanction of the Court, exercise all powers by this Act given to the official liquidator (f) :
- (8) The liquidators may ~~exercise~~ the powers hereinbefore given (g) to the Court of settling the list of contributories of the company, and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories :
- (9) The liquidators may at any time after the passing of the resolution for winding-up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same (h) :
- (10) The liquidators shall pay the debts of the company and adjust the rights of the contributories amongst themselves (i).

Sect. 185.

- (a) Cf. s. 210, as to payment in full. (f) ss. 154, 156; see ss. 189, 190, 202, 210, 211, 212.
 (b) Cf. ss. 36, 153, 157, 167.
 (c) Cf. s. 151. (g) s. 157.
 (d) Cf. ss. 151, 152; see ss. 186, 191, 192. (h) Cf. s. 161.
 (e) No similar provision in a compulsory winding-up. (i) As to debts, s. 209; set-off, s. 160; payments from contributories and application thereof, s. 36; distribution of surplus assets, s. 167.

"In a winding-up . . . the rights arising from unequal contributions on shares of equal amount must be adjusted, and the property of the company, including its uncalled capital not required to satisfy prior claims, must be applied for that purpose. But when these rights are adjusted . . . the rights and interest of the contributories in the company must then be simply in proportion to their shares:" *per Lord Macnaghten, Birch v. Cropper, In re Bridgewater Canal Co.*, 14 App. Cas. 525, at p. 545.

Liquidators may be appointed at the meeting at which the resolution to wind-up is passed, or at a subsequent meeting, without special notice: *In re Welsh Flannel Co.*, 20 Eq. 360.

The principles of administration in a voluntary winding-up are the same as in a compulsory winding-up, or one under supervision: *Black & Co.'s Case*, 8 Ch. 254; but see *Birch v. Cropper, ubi sup.*

Effect of voluntary winding-up on share capital of company limited by guarantee.
 25 & 26 Vict. c. 89, s. 131.

185. Where a company limited by guarantee, and having a capital divided into shares, is being wound-up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt (a) due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

(a) ss. 127, 143.

Power of company to delegate appointment of liquidators.
 25 & 26 Vict. c. 89, s. 136.

186. A company about to be wound-up voluntarily, or in the course of being wound-up voluntarily, may, by an extraordinary resolution (a), delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised, and any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company (b).

(a) s. 180.

(b s. 184; (3) — (6), ss. 191—192.

Arrangement when binding on creditors.
 25 & 26 Vict. c. 89, s. 136.

187. Any arrangement (a) entered into between a company about to be wound-up voluntarily, or in the course of being wound-up voluntarily, and its creditors, shall be binding on the

company if sanctioned by an extraordinary resolution (b) and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned (c). Sect. 189.

Buckley, p. 306.

(a) Cf. s. 210.

(b) s. 180.

(c) s. 188.

188. Any creditor or contributory of a company that has in manner aforesaid (a) entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Power of creditor or contributory to appeal.
25 & 26 Vict. c. 89, s. 137.

(a) s. 187.

An application under this section should be made by petition or motion, (Rule 49, *infra*), or if the judge shall so direct, by summons at Chambers.

189. Where a company is being wound-up voluntarily the liquidators or any contributory of the company may apply (a) to the Court (A) to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound-up by the Court; and the Court (B) if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order (c) or decree on such application as the Court thinks just.

Power for liquidators or contributories in voluntary winding-up to apply to Court.
25 & 26 Vict. c. 89, s. 138.

Buckley, pp. 307, 308.

(A) Eng. Act adds—"in England, Ireland, or Scotland, or to the Lord Ordinary on the Bills in Scotland in time of vacation." (B) *Id.* inserts—"or Lord Ordinary, in the case aforesaid." (C) *Id.* adds—"interlocutor."

(a) Rule 49, *infra*, as to mode of application.

Under this section, a means is provided of applying to the Court "to determine any question arising in the matter of such winding-up," in the same way as when any question arises in a compulsory winding-up or one under supervision. The application, under Rule 49, should be made by petition or motion. No provision is here made for an application by creditors, but under

Sect. 190. ss. 196—198, they can obtain a compulsory order or supervision order: see Buckley, pp. 308, 309, 229. Liquidators or contributories may, under this section, apply to the Court; but, as a rule, the application should be made by the liquidator, unless in the case of shareholders dissenting from some act of his, when the matter in question should be left to them to bring under the notice of the Court: *Licensed Victuallers, &c., Co.*, 17 L.T. 8; and see *In re Sunderland 32nd Universal Building Society*, 21 Q.B.D. 849.

Power of liquidators to call general meetings.
25 & 26 Vict. c. 89, s. 139.

190. Where a company is being wound-up voluntarily the liquidators may, from time to time, during the continuance of such winding-up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution (a) or extraordinary resolution (b) or for any other purposes they think fit; and in the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.

(a) s. 83.

(b) s. 180.

Power to fill up vacancy in liquidators.
25 & 26 Vict. c. 89, s. 140.

191. If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation, or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors (a), fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidator or (A) liquidators (if any), or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator or (A) liquidators (if any), or by any contributory of the company, be determined by the Court.

(A) Eng. Act omits—"liquidator or."

(a) s. 186.

Power of Court to appoint liquidators.
25 & 26 Vict. c. 89, s. 141.

192. If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application (a) of a contributory, appoint a liquidator or

liquidators; the Court may also, on due cause shown (b), Sect. 194. remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up (c).

Buckley, pp. 309, 310.

(a) R. 49, *infra*.

(b) Cf. s. 152.

(c) Cf. ss. 201—203.

"The jurisdiction of the Court to remove a liquidator under ss. 93 and 141 of the 'Companies Act, 1862' [ss. 152 and 192 of the N.S.W. Act] 'on due cause shown,' is not confined to cases where there is personal unfitness in the liquidator. Whenever the Court is satisfied that it is for the general advantage of those interested in the assets of a company that a liquidator should be removed, it has power to remove him, and appoint a new one." *In re Adam Eytan, Limited*; *ex p. Charlesworth*, 36 Ch. D. 299.

Removal of liquidator.

As to liquidators in a winding-up under supervision, see ss. 201, 202, 152.

193. As soon as the affairs of the company are fully wound-up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators. The meeting shall be called by advertisement, specifying the time, place, and object of such meeting, and such advertisement shall be published one month at least previously to the meeting in the Government (A) Gazette and in one or more newspapers circulating in the district in which the registered office of the company is situated.

Liquidators on conclusion of winding-up to make up an account. 25 & 26 Vict. c. 89, s. 143.

(A) Eng. Act here substitutes — company is registered; and makes no "London," "Edinburgh," "Dublin," provision for publication in other according to the country in which the newspapers.

194. The liquidators shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved (a); and if the liquidators make default in making such return to the Registrar, they shall incur a penalty not exceeding five pounds for every day during which such default continues.

Liquidators to report meeting to the Registrar. 25 & 26 Vict. c. 89, s. 143.

Buckley, pp. 311, 312.

(a) Cf. s. 169.

At the end of the three months, the company ceases to exist, and there is no jurisdiction to order the compulsory winding-up of the company: *Pinto Silver Mining Co.*, 8 Ch. Div. 273; and Cf. *In re Schooner Pond Coal Co.*, W.N. (1888) 70.

Sect. 195. 195. All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims (a).

Costs of voluntary liquidation.
25 & 26 Vict. c. 89, s. 144.

Buckley, p. 312.

(a) Cf. s. 168, and notes in Buckley, Buckley, p. 227, as to costs incurred in pp. 277—279; s. 139 and note thereto litigation by a company in liquidation. as to costs of the winding-up petition;

The liquidators are not personally responsible to their solicitors for their costs: *In re Trueman's Estate*, *Hook v. Piper*, 14 Eq. 278; nor in a compulsory winding-up: *In re Anglo-Moravian Hungarian Railway Co.*, *ex p. Watkin*, 1 Ch. Div. 130.

Saving rights of creditors.
25 & 26 Vict. c. 89, s. 145.

196. The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound-up by the Court (a) if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Buckley, pp. 312—315.

(a) i.e., before dissolution under s. 194, *q.v.* and note thereto. SS. 131, 132, 133, deal with the circumstances under which a company may be wound-up by the Court; as to a winding-up subject to the supervision of the Court, see ss. 198—200.

The Court, in exercising a choice between a voluntary and a compulsory winding-up, will have regard—(ss. 144, 200, *q.v.*)—to the wishes of creditors and contributories.

Scope of section.

This section applies whether the voluntary winding-up commenced before or after the presentation of the petition: *In re New York Exchange, Limited*, 39 Ch. D. 415. “The Court will not make a compulsory order when a voluntary winding-up is pending, unless it is satisfied that the creditor will be prejudiced by the continuance of the voluntary winding-up: *per Cotton, L.J.*, *S.C.*, at p. 422.

But it appears that a compulsory order will only be made on the application of a contributory under special circumstances: *Gold Co.*, 11 Ch. Div. 701.

The Court has power under the next section following (s. 197) to make an order adopting the proceedings of a voluntary winding-up; but even without such order the proceedings are not invalidated.

Power of Court to adopt proceedings of voluntary winding-up.
25 & 26 Vict. c. 89, s. 146.

197. Where a company is in course of being wound-up voluntarily, and proceedings are taken for the purpose of having the same wound-up by the Court (a), the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound-up by the Court, provide in such order or in any other

order for the adoption of all or any of the proceedings taken in Sect. 199.
the course of the voluntary winding-up (b).

Buckley, pp. 315, 316.

(a) ss. 181, 196.

Contributories: *Taurine Co.*, 25 Ch. Div. at pp.

(b) e.g., by adopting the list of contri- 129, 135.

The commencement of the winding-up will date from the presentation of the petition: *S. C.* p. 119.

Winding-up subject to the supervision of the Court.

198. When a resolution has been passed by a company to wind-up voluntarily (a), the Court may make an order (b) directing that the voluntary winding-up shall (A) continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others, to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.

Power of Court, on application, to direct winding-up subject to supervision. 25 & 26 Vict. c. 89, s. 147.

Buckley, pp. 316—318.

(A) Eng. Act reads—"should continue."

(a) s. 180.

(b) R.R. 6, 7, and Form 4, *infra*.

See s. 200, under which the wishes of the creditors and contributories are to be regarded.

A supervision order is a continuation of the proceedings under the voluntary winding-up; and the winding-up under supervision dates from the commencement of the voluntary winding-up, as defined by s. 181: *Weston's Case*, 4 Ch. 20; *In re Emperor Life Assurance Soc.*, 81 Ch. D. 78.

Commencement.

As to contributory's petition, see further s. 196, and note thereto. Contributories may also, under s. 189, *q.v.*, apply to the Court to determine any question arising in the winding-up.

199. A petition, praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding-up the company by the Court (a).

Petition for winding-up subject to supervision. 25 & 26 Vict. c. 89, s. 148.

(a) ss. 138, 140.

A petition under this section must be served upon the company as well as upon the liquidator: Rule 3 (*sub fin.*), *infra*.

Sect. 200.

Court may have regard to wishes of creditors. 25 & 26 Vict. c. 89, s. 148.

200. The Court may, in determining whether a company is to be wound-up altogether by the Court or subject to the supervision of the Court, in the appointment of a liquidator (A) or liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings (a) of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. In the case of creditors regard shall be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company (b).

Buckley, pp. 318—320.

(A) Eng. Act omits "a."

(a) R.R. 43—45, *infra*.

(b) Cf. s. 144; and see s. 198.

See the cases collected in Buckley, *ubi sup*.

Court may appoint official liquidators in winding-up subject to supervision. 25 & 26 Vict. c. 89, s. 150.

201. Where any order is made by the Court for a winding-up subject to the supervision of the Court (a), the Court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company (b). The Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation (c).

Buckley, pp. 320, 321.

(a) s. 198.

(b) s. 184.

(c) R. 16; and cf. ss. 192, 203.

The Court may, under this section, remove the liquidators appointed by the Court in a winding-up subject to supervision, and under s. 192, those appointed by the company or the Court in a voluntary winding-up.

Effect of order of Court for winding-up subject to supervision. 25 & 26 Vict. c. 89, s. 151.

202. Where an order is made for a winding-up subject to the supervision of the Court (a), the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the

Court, exercise all their powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound-up altogether voluntarily (b); but, save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of actions, suits, and other proceedings (c), be deemed to be an order of the Court for winding-up the company by the Court, and shall confer full authority on the Court to make calls (d), or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding-up the company altogether by the Court; and in the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidators" shall be deemed to mean the liquidators conducting the winding-up subject to the supervision of the Court.

Buckley, p. 321.

(a) s. 198.

(b) s. 184.

(c) ss. 140, 214.

(d) s. 161.

Cf. s. 155 as to restrictions in a compulsory winding-up.

Under this section the liquidators retain the same powers in a winding-up subject to supervision, as they have in a voluntary winding-up, subject to any restrictions imposed by the Court; where, therefore, the Court has not given any directions restricting the exercise of his powers, *semble*, under ss. 190, 202, 211, the liquidator, though the winding-up is under supervision, has power to enter into an arrangement, with the sanction of meetings of the contributories, and the sanction of the Court is not necessary: *In re Anglo Romano Water Co.*, *Wright's Case*, 5 Ch. 437.

203. Where an order has been made for the winding-up of a company subject to the supervision of the Court (a), and such order is afterwards superseded by an order directing the company to be wound-up compulsorily (b), the Court may in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally (c) or permanently, and either with or without the addition of any other persons, to be official liquidators.

Buckley, p. 322.

(a) s. 198.

(b) s. 131.

(c) ss. 138, 151.

Where a winding-up under supervision was superseded by a compulsory winding-up, the winding-up was made to date from the commencement of the winding-up under supervision: *In re United Service Co.*, 7 Eq. 76, but *per* Lindley, L.J., that case is "hardly an authority for anything": *In re Taurine Company*, 25 Ch. Div. at p. 140.

Powers of liquidators.

Voluntary liquidators may in certain cases be appointed official liquidators. 25 & 26 Vict. c. 89, s. 152.

*Supplemental Provisions.***Sect. 204.**

After com-
mencement of
winding-up dis-
positions of
property of
company void.
25 & 26 Vict. c.
89, s. 153.

204. Where any company is being wound-up by the Court or subject to the supervision of the Court, all dispositions of the property, effects, and choses (A) in action of the company, and every transfer of shares, or alteration in the *status* of the members of the company, made between the commencement of the winding-up (a) and the order for winding-up, shall, unless the Court otherwise orders, be void (b).

Buckley, pp. 322—326.

(A) Eng. Act reads—"things."

(a) ss. 137, 181.

(b) And compare ss. 172, 182, 214, 215.

Notice.

As to transfers, see s. 33, Eng. s. 35, and notes thereto, Buckley, pp. 92—132. Advertisement of the winding-up petition is notice to all the world: *per Romilly, M.R., Emmerson's Case*, 2 Eq. 231; but, *semble*, such advertisement is only notice where it can possibly have reached the person sought to be affected: *Mersey Steel Co. v. Naylor, Benson & Co.*, 9 App. Cas. at p. 440.

Disposition of
property.

The effect of a voluntary winding-up under s. 182 is to render void all transfers of shares, except those therein mentioned, or alteration in the *status* of the members of the company taking place after the commencement of the winding-up; by this section the Court is given a discretion as to whether such cases shall be void or not.

This section avoids all dispositions of its property by a company, but not transfers of shares: *Barned's Banking Co., s.p. Contract Corporation*, 3 Ch. 105; nor payment of a debt to a company: *Mersey Steel and Iron Co v. Naylor, &c.*, 9 App. Cas. at p. 440; but payment by a company, unless sanctioned by the Court, will be avoided. *Bona fide* dispositions of property of a company in the ordinary course of its trade, made after the presenting of a petition for winding-up, and completed before the winding-up order, will, as of course, in the exercise of the discretion given to the Court by this section, be confirmed. When, however, such dispositions are incomplete, and rest in contract at the time of the winding-up order, the Court has no discretionary power to order the contract to be fulfilled, and the person with whom it was entered into, though he has paid his money, has only a general claim as a creditor for damages in respect of the breach of contract; *In re Wiltshire Iron Company, s.p. Pearson*, 3 Ch. 443.

Alteration of
status.

As to fraudulent preference, see s. 215, and "Bankruptcy Act, 1887," s. 56.

Where a holder of £10 shares, on which £7 had been paid, with knowledge that a petition for winding-up had been presented, advanced £3 on this alternative, viz., if the bank should be able to go on the advance was to be treated as a loan, while if the bank were wound-up, the advance was to be taken as paid upon shares in anticipation of calls, it was held that the presentation of the petition rendered such an arrangement invalid under this section, as an "alteration in the *status* of the members of the company, made between the commencement of the winding-up and the order for winding-up," and that the shareholder was not entitled to treat the amount as paid in anticipation of calls: *In re Oriental Commercial Bank, Barge's Case*, 5 Eq. 420.

Where pending a petition to wind-up an unregistered company, the company was registered under the Act with a view to a voluntary winding-up, it was held that the subsequent registration was a nullity, and that the company was being wound-up as an unregistered company; by an "unregistered company" is meant a company unregistered at the date of the commencement of the winding-up: *per* Malins, V.C., *In re Hercules Insurance Co.*, 11 Eq. at p. 333; and *cf.* s. 247. **Sect. 207.**

205. Where any company is being wound-up, all books, accounts, and documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded (a). Books of company to be prima facie evidence. 25 & 26 Vict. c. 89, s. 154.

(a) And see s. 98.

206. Where any company has been wound-up under this Act and is about to be dissolved (a), the books, accounts, and documents of the company and of the liquidators may be disposed of in the following way (that is to say), where the company has been wound-up by or subject to the supervision of the Court, in such way as the Court directs, and where the company has been wound-up voluntarily, in such way as the company by an extraordinary resolution (b) directs; but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the company or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be made forthcoming, to any party or parties claiming to be interested therein. Disposal of books and documents. 25 & 26 Vict. c. 89, s. 155.

Buckley, p. 326.

(a) ss. 169, 194.

(b) s. 180.

207. Where an order has been made for winding-up a company by the Court or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise (a). Inspection of books. 25 & 26 Vict. c. 89, s. 156.

Buckley, pp. 326—328.

(a) Sch. I., Table A. (78). See R 55, official liquidator, see s. 153, and note as to documents, &c., relating to the thereto. winding-up. As to discovery from the

Sect. 208. The power given by this section of ordering inspection of the books and papers of a company which is in course of winding-up, is *prima facie* to be exercised only for the purposes of the winding-up, and for the benefit of those who are interested in the winding-up, and will not in general be exercised for the purpose of enabling individual shareholders to establish claims for their personal benefit against the directors or promoters. The section only applies to books and papers in the possession of the company, and does not enable the Court to decide any question of right against third parties, who have the books in their possession and claim to be entitled to such possession: *In re North Brazilian Sugar Factories*, 37 Ch. Div. 83.

Power of assignee of chose in action to sue.
25 & 26 Vict. c. 89, s. 157.

208. Any person to whom any chose (A) in action belonging to the company is assigned in pursuance of this Act may bring or defend any action or suit relating to such chose in action in his own name.

(A) Eng. Act reads—"thing in action."

Debts of all descriptions to be proved.
25 & 26 Vict. c. 89, s. 158.

209. In the event of any company being wound-up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof (a), against the company, a just estimate being made, so far as it is possible, of the value (b) of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Buckley, pp. 328—363.

(a) R.R. 20—27.

(b) "At the date of the order to wind-up the company": R. 25.

General scheme of liquidation may be sanctioned.
25 & 26 Vict. c. 89, s. 159.

210. The liquidators may, with the sanction of the Court (a) where the company is being wound-up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution (b) of the company, where the company is being wound-up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement (c) as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

Buckley, pp. 363, 364.

(a) R. 48.

(b) ss. 180—190.

(c) But see s. 187; as to compromise, see note to next section.

211. The liquidators may, with the sanction of the Court (a) **Sect. 212.** where the company is being wound-up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution (b) of the company where the company is being wound-up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company, or the winding-up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Power to compromise.
25 & 26 Vict. c. 89, s. 180.

Buckley, pp. 364—367.

(a) R. 47.

(b) ss. 180, 190.

This section read with the 210th section, seems to provide "that a company, by its official liquidators, with the sanction of the Court, shall have exactly the same power of compromising both with its creditors and its debtors as an individual would have." . . . "There is nothing in the Act which enables one creditor to bind another to accept a compromise, or which enables one debtor to bind another debtor with respect to paying a composition": *per* James, L.J., *In re Albert Life Co.*, L.R. 6 Ch., at p. 386; excepting, of course, the powers under s. 187 (Eng. Act, s. 186); and *quære*, therefore, whether the Court has power to bind dissentient creditors or contributories to accept a compromise approved by a majority of them. And to remedy this, the "English Joint Stock Companies Arrangement Act, 1870," was passed; but no such Act has been passed in New South Wales. And the power of the liquidators extends to making a general compromise of claims upon contributories as a class, abandoning an equal proportion in each case, notwithstanding the differences of position between the contributories, and without inquiring closely into the means of each individual contributory: *Bank of Hindustan, &c.*, L.R. 2 P.C. 490; and the Court may, under this section, sanction such a compromise. *In re Commercial Bank Corporation of India and the East*, 8 Eq. 241.

Effect of section.

212. Where any company is proposed to be or is in the course of being wound-up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first-mentioned

Liquidators may accept shares as consideration for sale of property of company.
25 & 26 Vict. c. 89, s. 161.

Sect. 212. company may, with the sanction of a special resolution (a) of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, policies, or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound-up, or may enter into any other arrangement whereby the members of the company being wound-up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound-up; subject to this proviso that if any member of the company being wound-up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer; (that is to say), either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned (b), such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution. No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding-up the company or for appointing liquidators; but if an order be made within a year for winding-up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

Buckley, pp. 367—373.

(a) s. 188.

(b) See next section.

This section does not relate to a purely voluntary winding-up only, but **Sect. 212.** includes a voluntary winding-up under supervision of the Court: *In re Imperial Mercantile Credit Association*, 12 Eq. 504, 509, note.

In sanctioning a scheme for the reconstruction of a company under liquidation, by a transfer of its assets to a new company to be formed for the purpose, the Court will have regard to the wishes of a majority of the shareholders and creditors deliberately expressed upon full information fairly afforded to them as against the opposition of a dissentient minority; and although a dissentient shareholder cannot be compelled to accept shares in the new company, or the valuation put upon his interest by the official liquidator, if he will accept neither of these alternatives the price of his interest must be settled by arbitration, as provided by the 213th section; *S.C.* An agreement under this section, entered into by a company about to be wound-up voluntarily, for the sale and transfer of its business to another company, is binding upon the creditors of the transferring company. The remedy of a creditor who cannot get payment of his debt is to obtain a winding-up order before the expiration of the year: *In re City and County Investment Co.*, 13 Ch. Div. 475.

This section clearly contemplates a sale of the assets of the liquidating company for such an equivalent in value as is pointed out in the section, and does not contemplate the subjecting of the shareholders in the liquidating company, without their unanimous consent, to a fresh original liability in the shape of a guarantee. An arrangement, therefore, by which a selling company was to take a certain number of shares in a new company, and any deficiency in the assets for that purpose was to be made good by a call on its shareholders, is void as *ultra vires*, and cannot be supported under this section. *Seemle*, that such an arrangement would be void, even if only the shareholders who assented to it were to be bound by it. A proper form of suit in which to set aside such an arrangement is a suit by one shareholder of the company on behalf of himself and all other shareholders, although a large number of shareholders have assented to the arrangement, and it has been actually carried into effect: *Clinch v. Financial Corporation*, 4 Ch., at pp. 121, 122.

The validity of an amalgamation under this section cannot be impeached in the winding-up jurisdiction, but can only be decided in a suit: *Imperial Bank of China, &c.*, 1 Ch. at p. 347. And see *Israel v. Atlas Engineering Co.*, 10 N.S.W. L.R. Eq. 277 on this section; as to notice, see s. 83 and notes thereto.

An agreement to assign the assets of a company to a promoter of a new company is *ultra vires*, and effect cannot be given to it under this section, which only authorises a sale to a company, not to a person about to form a company: *Bird v. Bird's Sewage Co.*, 9 Ch. 358.

A shareholder in a company, the business of which is proposed to be transferred to another company in consideration of shares in such other company, cannot be compelled under this section to take shares in the other company, nor does he by failing to express his dissent in writing from the resolution sanctioning the arrangement within seven days after the meeting at which it was passed forfeit his right to refuse to become such shareholder: *Re the Bank of Hindustan, &c.*, *ex p. Los*, 34 L.J. Eq. 609, where the courses open to a shareholder in such a case are, *per Romilly, M.R.*, set out as follows:—(1) "He (the shareholder) may assent to the arrangement"; (2) "he may, if he does not assent to it, merely leave the matter as it was, and have nothing to do with the new company and abandon his deposit"; (3) "he may, upon giving proper notice, require that his shares may be paid for"; "if he takes the second of

Wishes of majority.

Sale, meaning.

Transaction, how impeached

Sale, not to an individual.

Dissentient shareholder.

Sect. 213, these courses he simply becomes no shareholder in the company with which his company is proposed to be consolidated."

Where a company was being wound-up voluntarily, and resolutions were passed for a sale to a new company, and fixing a time within which old shareholders were to apply for new shares, and directing sale of shares not taken up, a shareholder who had not dissented, but had applied long after the time fixed, moved to set aside the sale and resolutions as invalid; *held, per Stirling, J.*, the sale and resolutions were valid: *Postlethwaite v. Port Phillip Co.*, W.N. (1890) 9.

Notice of dissent served after passing of special resolution, but before confirmatory meeting, and not objected to till one month after confirmatory meeting, *held, good*: *In re London & Westminster Bread Co.*, W.N. (1890) 8.

And *cf. Weston v. The New Guston Co.*, 1 Megone's Companies Cases 352, as to option to require allotment of shares within a time fixed. Where a compromise had been sanctioned by the Court, the shareholders are bound: *Nicholl v. Eberhardt Co.*, W.N. (1888) 225.

Sanction, when to be obtained.

And the sanction required under this section, in case an order is made within a year for winding-up the company by or subject to the supervision of the Court, must be obtained at or after the making such order, and cannot be obtained previously in the matter of the voluntary winding-up: *In re Callao Bis. Co.*, 42 Ch. Div. 169.

Mode of determining price.
25 & 26 Vict. c.
89, s. 162.

213. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same such dispute shall be settled by arbitration under and in accordance with the provisions (a) herein contained in relation to arbitration (A).

Buckley, pp. 373, 374.

(A) The Eng. Act adopts the provisions as to arbitration of the "Companies Clauses Consolidation Act, 1845."

(a) ss 102—125, *q. v.*

Sec. 4 of the "Arbitration Act," 31 Vict. No. 15, is applicable to references under the provisions herein relating to arbitration: *Re Anglo-Italian Bank and De Rosas*, L.R. 2 Q.B. 452; *De Rosas v. Anglo-Italian Bank*, L.R. 4 Q.B. 462.

The Court has power (in England) to order a commission to issue for the examination of witnesses abroad: *In re Mysore West G. M. Co.*, W.N. (1889) 157.

Certain attachments, sequestrations, and executions to be void.
25 & 26 Vict. c.
89, s. 163

214. Where any company is being wound-up by the Court or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement (a) of the winding-up shall be void to all intents (b).

Buckley, pp. 374, 375.

(a) ss. 137, 181.

be read with this sect.) 204, 241, 242,

(b) And see ss. 138, 140 (which should 245, 246.

An execution levied after winding-up commenced, "according to the plain terms of this section, is void to all intents": *per* Jessel, M.R., *In re Artistic Colour Co.*, *s.p. Fourdrinier*, 31 Ch. Div., at p. 512. But see *In re Dry Docks Corporation of London*, 39 Ch. Div. 306. Sect. 215.

215. Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property as would, if made or done by or against any individual, be deemed in the event of his insolvency (a) to be void or voidable shall if made or done by or against any company, be deemed, in the event of such company being wound-up under this Act, to be void or voidable in like manner; and for the purposes of this section the presentation of a petition for winding-up a company shall, in the case of a company being wound-up by the Court or subject to the supervision of the Court, and a resolution for winding-up the company shall, in the case of a voluntary winding-up, be deemed to correspond with the sequestration of the estate of an individual; and any conveyance or assignment made by any company formed under this Act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

Voidable preferences.
25 & 26 Vict. c. 89, s. 164.

Buckley, pp. 375—377.

The Eng. sect. differs from the N.S.W. Act in referring to such acts as would be "fraudulent preferences on the part of a trader in the event of his bankruptcy."

(a) By s. 127 (2) of the "Bankruptcy Act, 1887," 51 Vict. No. 19, "insolvent" and "insolvency" are to be read as "bankrupt" and "bankruptcy."

"Though a company is insolvent, it is not every act of the company which will amount to a fraudulent preference. There must be a contemplation of bankruptcy, that is to say, of a winding-up; and there must be absence of pressure": *per* Giffard, V.C., *In re Inns of Court Hotel Co.*, 6 Eq., at p. 90.

In determining whether a transaction amounts to a fraudulent preference, the Court ought now to have regard simply to the statutory definition contained in the "Bankruptcy Act." The decisions on the subject before the Act may be useful as guides; but the standards laid down in them must not be substituted for that which is laid down in the Act: *s.p. Griffith*, 23 Ch. Div. 69; see, therefore, as to what conveyances, &c., are void or voidable, "Bankruptcy Act, 1887," 51 Vict. No. 19, ss. 55—58, amended by 52 Vict. No. 11; it having been held in England by Kay, J., that Eng. s. 164 of the "Companies Act, 1862," refers to the law of bankruptcy for the time being, and not to that in force at the date of the Act: *Liverpool, &c., Guarantee Co.*, 46 L.T. 54; and so in N.S.W. in *In re Atlas Engineering Co.*, *Davy's Case*, 10 N.S.W. L.R. Eq. 179, the question of preference is treated by Owen, Ch. J. Eq., as being a question under the existing "Bankruptcy Acts," *ubi sup.*; the above-mentioned provisions of which "are read into the 'Companies Act, 1862.'"

Sect. 216. Act^s by s. 215": *ib.* p. 185. And in the same case his Honour held that the combined effect of ss. 56—58 of the "Bankruptcy Act, 1887," and s. 2 of the Amending Act, is to validate any payment, &c., referred to in s. 57, whether having the effect of preferring or not, provided such payment, &c., was made before the date of the sequestration order, and without notice of an act of bankruptcy, and provided the payment, &c., is not itself an act of bankruptcy. And following this case, it has been held by Manning, J., in *Re William Sharp* (Feb. 20, 1890), following his previous decision in *Jackson's Case* (12th Dec., 1889), that no transaction can be set aside as an act of bankruptcy which was six months old at the date of the presentation of the petition of bankruptcy.

Power of Court
to assess dam-
ages against
delinquent
officers.
25 & 26 Vict. c.
89, s. 165.

216. Where in the course of the winding-up of any company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such company, has misapplied or retained in his own hands, or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just (a).

Buckley, pp. 377—388.

(a) This section applies equally to a liquidation under s. 189; *Rance's Case*, 6 Ch. voluntary winding-up, upon an application—104.

Scope of section.

In an action, nominal damages may be recovered wherever a breach of duty is shewn; but this doctrine does not apply to this section. The right which this section gives is not given to the company, or the representative of the company with whom there is a contract, or as towards whom there is a duty, or as regards whom there is a breach of duty; but the right under this section is given to any liquidator or any creditor or contributory of the company; but, *semble*, the person applying under this section must have a direct pecuniary interest in the success of the application: *Bentinck v. Fenn*, 12 App. Cas. 652, 662.

The creditor or contributory has a right to this extent, that if, owing to a misfeasance or breach of duty, the funds of the company in which he is interested have been diminished, those funds shall again be made good and the assets of the company shall be recouped the loss which they had sustained.

For an application to succeed under this section, the applicant must show—(a) Sect. 216.
a direct pecuniary interest in the success of the application; (b) breach of trust or
misfeasance in the nature of breach of trust; (c) loss arising therefrom to the
funds and assets of the company: *S.C.*, and *cf. Coventry & Dixon's Case*, 14 Ch.
Div. at p. 670.

If directors of a limited company apply the money of the company for purposes
so outside its powers that the company could not sanction such application, they
may be made personally liable as for a breach of trust; but if they apply the
money of the company, or exercise any of its powers, in a manner which is not
ultra vires, then a strong and clear case of misfeasance must be made out to
render them liable for a loss thereby occasioned to the company: *In re Fawcett*
Electric Accumulator Company, 40 Ch. D. 141.

To impeach the transactions dealt with by this section it is not necessary to file
a bill. The Court is empowered to examine into the conduct of a director. This
section and the 160th section were introduced in order that by means of proceed-
ings under the Act, without any double process or double set of proceedings,
complete justice might be done between the parties and a complete winding-up
effected; the instances are rare in which the jurisdiction ought not to be exercised:
Stringer's Case, 4 Ch. 475, 493, where it was held that the Court had summary
power under those sections to order a contributory or director to repay a dividend
declared and paid under a delusive and fraudulent balance-sheet, and *cf. Rance's*
Case, 6 Ch. 104; *Oxford Building Society*, 35 Ch. D. 502.

To bring a case within this section it is necessary that the person summoned
should have been an officer of the company at the time when the wrongful act
complained of was committed: *McKay's Case*, 2 Ch. Div. at p. 6.

"There is no doubt about the rule of this Court, that an agent cannot, without
the knowledge and consent of his principal, be allowed to make any profit out of
the matter of his agency beyond his proper remuneration as agent. It is perfectly
settled law that that rule applies with peculiar stringency to the directors of joint
stock companies who are the agents of the company for effecting the sales or the
purchases made by the company": *Hay's Case*, 10 Ch. at p. 601. A director,
therefore, making profit in the sales or purchases made by the company, and which
are effected by him, is guilty of a misfeasance within the terms of this section, and
will be accountable to the Court for such profit. Cases of this kind are divided by
Buckley, at p. 383, into two classes:—

(1) If a man becomes a director at a time when a contract for sale to the
company is not absolutely completed, so that it is his duty to act for the company
in the matter of the purchase, he can be compelled to make good at any time the
full possible value of any present which he has accepted from the vendor. See
Weston's Case, 10 Ch. Div. 579; *Hay's Case*, 10 Ch. 593; *McKay's Case*, 2 Ch.
Div. 1; *Pearson's Case*, 4 Ch. D. 222, 5 Ch. Div. 336; *De Ruign's Case*, 5 Ch.
Div. 306; *Englefield Colliery Co.*, 8 Ch. Div. 388.

(2) And apart from any question of incomplete contract, and from any sugges-
tion that the purchase money has been fictitiously increased by amounts never
intended really to remain in the vendor's pocket, it is quite sufficient to establish
liability that it is shown that the director has received in the matter of his agency
a gift from the vendor. See cases cited *supra*, and *Carriage Co-operative*
Association, 27 Ch. D. 322; *Ormerod's Case*, 37 L.T. 244, 25 W.R. 765;
Hunt's Case, 37 L.J. (Ch.) 278; *Anglo-French Society, ex p. Pelly*, 21 Ch. Div.
492.

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While the company is a going concern, the liability, enforceable under the section in the course of the winding-up, must be enforced by action: *Nant-y-Glo, &c., Co. v. Graves*, 12 Ch. D. 738.

Where an action was brought by a company against the promoter for the amount of the secret profit made by him in the course of its formation, and a specific sum was found due from him on that footing, it was held that the debt so due from him was incurred by "fraud" and also "breach of trust," within a section corresponding to s. 42 of the "Bankruptcy Act," and that he was not released from such debt by his discharge under that Act: *Emma Silver Mining Co. v. Grant*, 17 Ch. D. 123.

Penalty on
falsification of
books.
25 & 26 Vict. c.
89, s. 186.

217. If any director, officer, or contributory of any company wound-up under this Act destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or any (A) other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanour, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

(A) Eng. Act reads—"or other document."

Cf. "Criminal Law Amendment Act, 1883," s. 186.

Prosecution of
delinquent
directors or
officers on
winding-up by
Court.
25 & 26 Vict. c.
89, s. 187.

218. Where any order is made for winding-up a company by the Court or subject to the supervision of the Court, if it appear in the course of such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible (a), the Court may on the application (b) of any person interested in such winding-up, or of its own motion, direct the official liquidators, or the liquidators (as the case may be), to institute (A) a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

Buckley, p. 389.

(A) Eng. Act adds—"and conduct."

(a) See in particular the "Criminal No. 17, ss. 134—137.
Law Amendment Act, 1883," 46 Vict. (b) R. 49, by petition.

Prosecution on
voluntary
winding-up.
25 & 26 Vict. c.
89, s. 188.

219. Where a company is being wound-up altogether voluntarily, if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer, or member of

such company has been guilty of any offence in relation to the Sect. 222. company for which he is criminally responsible (a), it shall be lawful for the liquidators, with the previous sanction of the Court (b), to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

(a) See notes to preceding section.

(b) R. 49, obtained on petition.

220. If any person, upon any examination upon oath or affirmation authorised under this Act, or in any affidavit, deposition, or solemn affirmation in or about the winding-up of any company under this Act, or otherwise in or about any matter arising under this Act, wilfully and corruptly give false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury (a). Penalty of perjury.
25 & 26 Vict. c.
89, s. 169.

(a) "Criminal Law Amendment Act, 1883," s. 291.

Power of Court to make Rules.

221. The Judges of the Supreme Court may, as often as circumstances require, make such rules concerning the mode of proceeding to be had for winding-up a company in the Court as may from time to time seem necessary; but until such rules are made the general practice of the Supreme Court in its equity jurisdiction shall, so far as the same is applicable and not inconsistent with this Act, apply to all proceedings for winding-up a company. Supreme Court may make rules.
25 & 26 Vict. c.
89, s. 170.

See the Rules, *infra*, and R. 88.

PART V. (s. 222).

CONSTITUTION OF REGISTRATION OFFICE.

222. The registration of companies under this Act shall be conducted as follows, (that is to say):— Constitution of registration office.
25 & 26 Vict. c.
89, s. 174.

- (1) The Governor may with the advice of the Executive Council (A) from time to time appoint such Registrars, Assistant Registrars, clerks, and servants as he with such advice may think necessary for the registration of companies under this Act and remove them at pleasure:

Sect 223.

- (2) The Governor may with the advice of the Executive Council make regulations with respect to the duties to be performed by any such Registrars, Assistant Registrars, clerks, and servants as aforesaid, and may determine the place or places at which offices for the registration of companies are to be established :
- (3) It shall be lawful for the Governor with the advice aforesaid to apportion, (as he may think fit), among the Registrars, Assistant Registrars, clerks, and servants as aforesaid as remuneration for their services the fees authorised by this Act to be received :
- (4) Every person may inspect the documents kept by the Registrar, and may require a copy or extract of any document or part of a document to be certified by the Registrar ; and there shall be paid for such inspection and for such certified copy or extract the respective fees specified in the said Tables B and C (a). Such certified copy or extract shall be *prima facie* evidence of the matters therein contained in all legal proceedings whatever :
- (5) Whenever any act is herein directed to be done to or by the Registrar of Joint Stock Companies, such Act shall until a Registrar of Joint Stock Companies shall have been appointed, be done to or by the Registrar-General, who shall until such appointment have the powers and be subject to the liabilities given to and imposed upon the Registrar of Joint Stock Companies.

(A) In the Eng. Act, the Board of Trade is the authority to act under this section ; the Eng. section differs in some respects from the N.S.W. section, containing directions as to Ireland and Scotland, and the cases coming under the jurisdiction of the Vice-Warden of the Stannaries.

(a) Sch. I., *infra*.

PART VI. (A). (ss. 223—242).

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT

Registration of
existing com-
panies.
25 & 26 Vict. c.
89, s. 179.

223. The following regulations shall be observed with respect to the registration of companies under this Part of this Act, (that is to say,)—

- (1) No company having the liability of its members limited by Act of Parliament, Royal Charter (b), or Letters Patent, and not being a joint stock company (a) as hereinafter defined, shall register under this Act in pursuance of this Part thereof : Sect. 223.
- (2) No company having the liability of its members limited by Act of Parliament, Royal Charter, or by Letters Patent shall register under this Act in pursuance of this Part thereof as an unlimited company, or as a company limited by guarantee :
- (3) No company that is not a joint stock company as hereinafter defined shall in pursuance of this Part of this Act register under this Act as a company limited by shares :
- (4) No company shall register under this Act in pursuance of this Part thereof unless an assent to its so registering is given by a majority of such of its members as may be present personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose :
- (5) Where a company not having the liability of its members limited by Act of Parliament, Royal Charter, or Letters Patent is about to register as a limited company the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting :
- (6) Where a company is about to register as a company limited by guarantee the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of the same being wound-up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst

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themselves, such amount as may be required, not exceeding a specified amount (b) :

In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member.

(A) Part VII. in the Eng. Act; Part "Joint Stock Companies Acts." VI. referring to the application of the (B) Eng. Act omits the words—Act to companies registered under the "Royal Charter" throughout.

(a) s. 225.

(b) s. 8.

Companies
capable of being
registered.
25 & 26 Vict. c.
89, s. 180.

224. With the above exceptions and subject to the foregoing regulations, every company existing at the time of the commencement of this Act (A), consisting of seven or more members, and any company hereafter formed in pursuance of any Act of Parliament other than this Act (a), Royal Charter (b), or of Letters Patent, or being otherwise duly constituted by law and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited company, or a company limited by shares, or a company limited by guarantee ; and no such registration shall be invalid by reason that it has taken place with a view to the company being wound-up.

(A) Eng. Act adds—"including any company registered under the 'Joint Stock Companies Acts.'" "Royal Charter;" but adds provisions for companies working mines in the Stannaries.

(B) Eng. Acts omits the words—

(a) The words—"or in pursuance of" before "Royal Charter," seem required for the sense.

And see ss. 226—232.

An unregistered company which has no power under its deed of settlement to sell and transfer its business to another company, may, by registration under this Act, followed by voluntary liquidation, carry out such an agreement and effect a sale under s. 212: *Southall v. British Mutual Life Assurance Society*, C Ch. 614.

Definition of
Joint Stock
Company.
25 & 26 Vict. c.
89, s. 181.

225. For the purposes of this Part of this Act, so far as the same relates to the description of companies empowered to register as companies limited by shares, a joint stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on

the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons ; and such company when registered with limited liability under this Act shall be deemed to be a company limited by shares. **Sect. 227.**

226. No banking company claiming to issue notes (A) shall be entitled to limited liability in respect of such issue, but shall continue subject to unlimited liability in respect thereof, and, if necessary, the assets shall be marshalled for the benefit of the general creditors, and the members shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited company (a). Proviso as to banking companies. 25 & 26 Vict. c. 89, s. 182.

Buckley, p. 397.

(A) Eng. Act adds—"in the United Kingdom."

(a) See also s. 232.

This section in the Eng. Act has been repealed, and another section enacted by the "Eng. Companies Act, 1879," s. 6.

227. Previously to the registration in pursuance of this Part of this Act of any joint stock company (a) there shall be delivered to the Registrar the following documents ; (that is to say,)— Requisites to registration by company. 25 & 26 Vict. c. 89, s. 182.

- (1) A list showing the names, addresses, and occupations of all persons who on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing in cases where such shares are numbered, each share by its number :
- (2) A copy of any Act of Parliament, Royal Charters, Letters Patent, deed of settlement, contract of copartnery (A), or other instrument constituting or regulating the company :
- (3) If any such joint stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars ; (that is to say,)—

The nominal capital of the company and the number of shares into which it is divided :

Sect. 228.

The number of shares taken and the amount paid on each share :

The name of the company with the addition of the word "limited" (b) as the last word thereof :

With the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee.

(A) Eng. Act adds—"cost-book regulations."

(a) s. 225.

(b) s. 234.

Requisites to registration by company not being a joint stock company. 25 & 26 Vict. c. 89, s. 184.

228. Previously to the registration in pursuance of this Part of this Act of any company not being a joint stock company (a) there shall be delivered to the Registrar a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company, also a copy of any Act of Parliament, Royal Charter (A), Letters Patent, deed of settlement, contract of copartnery (B), or other instrument constituting or regulating the company, with the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of guarantee.

(A) Eng. Act omits—"Royal Charter." (B) *Id.* inserts—"cost book regulations."

(a) s. 225.

Power for company to register stock instead of shares. 25 & 26 Vict. c. 89, s. 185.

229. Where a joint stock (a) company authorised to register under this Act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

(a) s. 225.

Verification of particulars. 25 & 26 Vict. c. 89, s. 186.

230. The lists of members and directors and any other particulars relating to the company hereby required to be delivered to the Registrar shall be verified by a declaration of

the directors of the company delivering the same, or any two of **Sect. 233.** them, or of any two other principal officers of the company, made in pursuance of the Act ninth Victoria number nine (A).

(A) In England, 6 Will. IV., c. 62.

231. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or not a joint stock company as hereinbefore defined (a). Evidence of existence as a company may be required. 25 & 26 Vict. c. 89, s. 187.

(a) s. 225.

232. Every banking company existing at the date of the passing of this Act which registers itself as a limited company shall at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the company and such notice shall be given either by delivering the same to such person or firm, or leaving the same or putting the same as a prepaid letter (A) into the post addressed to him or them at such address as shall have been last communicated or otherwise become known as his or their address to or by the company; and in case the company omits to give any such notice as is hereinbefore required to be given, then as between the company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation (a). Notice to customers on registration of limited banking company. 25 & 26 Vict. c. 89, s. 188.

(A) Eng. Act omits—"as a prepaid letter."

(a) And see ss. 17, 226, 236.

233. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of any company in cases where such company is not registered as a limited company, or where previously to its being registered as a limited company the liability of the shareholders was limited by some other Act of Parliament, or by Royal Charter (A) or Letters Patent. Exemption from fees. 25 & 26 Vict. c. 89, s. 189.

(A) Eng. Act omits—"or by Royal Charter."

Sect. 234. 234. Any company authorised by this Part of this Act to register with limited liability, shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited" (a).

Change of
name.
25 & 26 Vict. c.
89, s. 180.

Buckley, p. 399.

(a) s. 227.

Certificate of registration. 235. Upon compliance with the requisitions in this Part of this Act contained with respect to registration, and on payment of such fees, (if any), as are payable under the tables marked B and C in the First Schedule hereto, the Registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this Act, and in the case of a limited company, that it is limited; and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands (a), and to exercise all the functions of an incorporated company (A).

Certificate of
registration.
25 & 26 Vict. c.
89, s. 191.

(A) Eng. Act omits the last clause, companies in Scotland. and adds a provision as to banking

(a) ss. 17, 55.

Certificate to be evidence of compliance with Act. 236. A certificate of incorporation given at any time to any company registered in pursuance of this Part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorised to be registered under this Act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act (a).

Certificate to be
evidence of
compliance
with Act.
25 & 26 Vict. c.
89, s. 192.

(a) See s. 17; but as to banking companies, see s. 232.

(Cf. *Ennis & West Clare Railway Co.*, 3 L.R. Ir. 94.

Vesting of property. 237. All such property, real and personal, including all interests and rights in, to, and out of property, real and personal, and including obligations and choses (A) in action, as may belong to or be vested in the company at the date of its registration under this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Vesting of pro-
perty.
25 & 26 Vict. c.
89, s. 193.

(A) Eng. Act reads—"things."

238. The registration in pursuance of this Part of this Act of **Sec. 240.**
any company shall not affect or prejudice the liability of such
company to have enforced against it, or its right to enforce, any
debt or obligation incurred, or any contract entered into by, to,
with, or on behalf of such company previously to such registra-
tion.

*Pursuance of obli-
gation not
affected.*
25 & 26 Vict. c.
89, s. 124.

Rackley, pp. 400, 401.

And see s. 240 (5).

239. All such actions, suits, and other legal proceedings as
may at the time of the registration of any company registered in
pursuance of this Part of this Act have been commenced by or
against such company, or the public officer or any member
thereof, may be continued in the same manner as if such
registration had not taken place; nevertheless execution shall
not issue against the effects of any individual member of such
company upon any judgment, decree, or order obtained in any
action, suit, or proceeding so commenced as aforesaid; but in
the event of the property and effects of the company being
insufficient to satisfy such judgment, decree, or order, an order
may be obtained for winding-up the company.

*Continuation of
existing actions
and suits.*
25 & 26 Vict. c.
89, s. 125.

240. When a company is registered under this Act in
pursuance of this Part thereof, all provisions contained in any
Act of Parliament, deed of settlement, contract of copartnership,
Royal Charter (A), Letters Patent, or other instrument, consti-
tuting or regulating the company, including in the case of a
company registered as a company limited by guarantee, the
resolution declaring the amount of the guarantee, shall be
deemed to be conditions and regulations of the company, in the
same manner and with the same incidents as if they were
contained in a registered memorandum of association and articles
of association; and all the provisions of this Act shall apply to
such company and the members, contributories, and creditors
thereof, in the same manner in all respects as if it had been
formed under this Act, subject to the provisions following, (that
is to say),—

*Effect of
registration.*
25 & 26 Vict. c.
89, s. 126.

- (1) That Table A, in the First Schedule to this Act, shall
not, unless adopted by special resolution (a), apply to

sect. 240.

any company registered under this Act in pursuance of this Part thereof :

- (2) That the provisions of this Act relating to the numbering of shares (b) shall not apply to any joint stock company whose shares are not numbered :
- (3) That no company shall have power to alter any provision contained in any Act of Parliament relating to the company :
- (4) That no company shall have power without the sanction of the Governor with the advice of the Executive Council (B) to alter any provision contained in any Royal Charter (A) or Letters Patent relating to the company :
- (5) That in the event of the company being wound-up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted prior to registration, who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability ; or to pay or contribute to the payment of the costs, charges, and expenses of winding-up the company so far as relates to such debts or liabilities as aforesaid ; and every such contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid ; and in the event of the death (c) or insolvency (c) of any such contributory as last aforesaid, or marriage of any such contributory, being a female, the provisions hereinbefore contained (d) with respect to the representatives, heirs, and devisees of deceased contributories, and with reference to the assignees of (D) insolvent contributories, and to the husbands of married contributories shall apply :
- (6) That nothing herein contained shall authorise any company to alter any such provisions contained in any

deed of settlement, contract of copartnery, Royal Sect. 241.
 Charter (A), Letters Patent, or other instrument constituting or regulating the company, as would, if such company had originally been formed under this Act, have been contained in the memorandum of association (e), and are not authorised to be altered by this Act:

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, deed of settlement, contract of copartnery, Royal Charter (A), Letters Patent, or other instrument constituting or regulating the company.

Buckley, pp. 401—403.

(A) Eng. Act omits the words—"Royal Charter" throughout this section; and adds here—"cost book regulations."

(B) *Id.* reads—"Board of Trade."
 (C) *Id.* adds—"bankruptcy or."
 (D) *Id.* adds—"bankrupt or."

(a) s. 83.

(b) s. 20.

(c) By the "Bankruptcy Act, 1887,"
 51 Vict. No. 19, s. 127 (2), "Bank-

ruptcy" and "Bankrupt" are to be read for "Insolvency" and "Insolvent."

(d) ss. 128, 129, 130, 164, 165.

(e) ss. 7, 8, 9.

There is no similar provision in this section (sub-s. 5) as in s. 36 (sub-s. 1) relieving a past member who has ceased to be a member for more than a year from liability in respect of debts contracted before he left the company.

241. The Court may, at any time after the presentation of a petition for winding-up a company registered in pursuance of this Part of this Act, and before making an order for winding-up the company, upon the application by motion of any creditor of the company, restrain further proceedings in any actions, suit, or legal proceeding against any contributory of the company, as well as against the company as hereinbefore (a) provided, upon such terms as the Court thinks fit.

Power of Court to restrain proceedings.
 25 & 26 Vict. c. 89, s. 197.

(a) ss. 138, and note thereto, 239; *cf.* s. 245.

Under this section and s. 245 proceedings may be restrained on the application of a creditor only, against any contributory or against the company as hereinbefore provided; while under s. 138 proceedings may be restrained on the application of company, creditor, or contributory. It would appear, therefore, that proceedings against the company may be stayed on the application of company, creditor, or contributory; but proceedings against a contributory can be restrained only on the application of a creditor. See Buckley, p. 217.

Sect. 242.

After order
actions not to
be proceeded
with except by
leave of the
Court.
25 & 26 Vict. c.
89, s. 198.

242. Where an order has been made for winding-up a company registered in pursuance of this Part of the Act, in addition to the provisions hereinbefore contained (a), it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose.

(a) ss. 140, 142, 239, 246. See note to s. 138.

PART VII. (ss. 243—251).

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

Winding-up of
unregistered
companies.
25 & 26 Vict. c.
89, s. 199.

243. Subject as hereinafter mentioned, any partnership, association, or company, except railway or tramway (A) companies incorporated by Act of Parliament, consisting of more than seven members (a), and not registered under this Act, and hereinafter included under the term "unregistered company," may be wound-up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such company, with the following exceptions and additions:—

- (1) The principal place of business of an unregistered company shall, for all the purposes of the winding-up of such company, be deemed to be the registered office (B) (b) of the company :
- (2) No unregistered company shall be wound-up under this Act voluntarily or subject to the supervision of the Court :
- (3) The circumstances under which an unregistered company may be wound-up are as follows ; (that is to say), (c)—
 - (a.) Whenever the company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs ; .
 - (b.) Whenever the company is unable to pay its debts ;
 - (c.) Whenever the Court is of opinion that it is just and equitable that the company should be wound-up :

- (4) An unregistered company shall, for the purposes of this Sect. 243. Act, be deemed unable to pay its debts, (d)—

(a.) Whenever a creditor to whom the company is indebted, at law or in equity, by assignment or otherwise, in a sum exceeding fifty pounds then due as (*sic*) served on the company, by leaving the same at the principal place of business of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum or to secure or compound for the same to the satisfaction of the creditor:

(b.) Whenever any action, suit, or other proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due from the company, or from him in his character of member of the company, and notice in writing in (*sic*) the institution of such action, suit, or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such suit, action, or other legal proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same:

(c.) Whenever (c) execution or other process issued on a judgment, decree, or order obtained in any Court in

Sect. 244.

favour of any creditor in any proceeding at law or in equity instituted by such creditor against the company, or any member thereof as such, or against any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied :

(d.) Whenever it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

Buckley, pp. 404—411.

(A) Eng. Act omits—"or tramway." the company is to be regarded as registered.
 (B) Sub-section 1 in the Eng. Act differs from the N.S.W. sub-section, (c) Eng. Act inserts—"in England or Ireland."
 containing provisions for ascertaining in which part of the United Kingdom
 Two sub-sections are added in the Eng. Act relating to the Stannaries and to Scotland.

(a) Cf. s. 131 (3).
 (b) s. 71.

(c) Cf. s. 131.
 (d) Cf. s. 132.

A society for purely literary, scientific, and social purposes is not within this section : *per Kay, J., In re The Bristol Athenæum*, W.N. (1889) 209; 43 Ch.D. 236.

A company registered under the Act 24th Vict. No. 21 is an unregistered company within the meaning of this section, and may be wound-up as such : *In re Grand United G.M. Co., ex p. Hole*, 10 N.S.W. L.R. Eq. 269. Members does not necessarily mean shareholders : *per Cotton, L.J., In re South London Fish Market Co.*, 39 Ch. Div. 324.

Who to be
 deemed contributories.
 25 & 26 Vict. c.
 89, s. 200.

244. In the event of an unregistered company being wound-up every person shall be deemed to be a contributory (a) who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding-up the company, and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid. But in the event of the death (A), or insolvency (b), of any contributory, or marriage of any female contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs, and devisees of a deceased contributory, and to the assignees of an insolvent (B) (h)

contributory, and to the husband of married contributories shall Sect. 247.
apply (c).

Buckley, pp. 411—414.

(A) Eng. Act. reads—"bankruptcy or." (B) *Id.* reads—"bankrupt or."

(a) s. 126; and *Cf.* ss. 38, 240 (5). and "Insolvent" are to read "Bank-
(b) By the "Bankruptcy Act, 1887," ruptcy" and "Bankrupt."
51 Vict. No. 12, s. 127 (3), "Insolvency" (c) ss. 128, 129, 130, 164.

But it is said that a mere debtor is not a contributory: Buckley, *ubi sup.*

245. The Court, at any time after the presentation of a petition for winding-up an unregistered company, and before making an order for winding-up the company, may, upon the application of any creditor of the company, restrain further proceedings in any action, suit, or proceeding against any contributory of the company, or against the company as hereinbefore provided (a), upon such terms as the Court thinks fit.

Power of Court
to restrain
proceedings.
25 & 26 Vict. c.
89, s. 201.

(a) s. 138 and note; see also note to s. 241 and s. 248.

246. Where an order has been made for winding-up an unregistered company, in addition to the provisions hereinbefore contained (a) in the case of companies formed under this Act, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose.

Effect of order
for winding-up
company.
25 & 26 Vict. c.
89, s. 202.

(a) s. 140; *cf.* ss. 242, 248.

See note to s. 138.

247. If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may by the order made for winding-up such company, or by any subsequent order, direct that all such property, real and personal, (including all interest, claims, and rights in, to, and out of property, real and personal and including choses (A) in action) as may belong to or be vested in the company, or to or in any person or persons in trust for or on behalf of the company (A), or any part of such property, is to vest (a) in the official liquidator or official liquidators by his or

Provision in
case of unregis-
tered company.
25 & 26 Vict. c.
89, s. 203.

Sect. 248. their official name or names, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names, and after giving such indemnity as the Court directs, bring or defend any actions, suits, or other legal proceeding relating to any property vested in him or them, or any actions, suits, or other legal proceedings necessary to be brought or defended for the purpose of effectually winding-up the company and recovering the property thereof.

(A) Eng. Act reads—"things in action."

(a) A vesting order can be obtained on an *ex parte* motion: *Albert Life Assurance Co.*, 18 W.R. 91, and a schedule of the property thereby to be vested, should be annexed to the petition: *Hercules Insurance Co.*, 11 Eq. at p. 322.

Provisions in this Part of the Act to be cumulative.
25 & 26 Vict. c. 89, s. 204.

248. The provisions made by this Part of the Act with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained with respect to winding-up companies by the Court (a), and the Court or official liquidator may, in addition to anything contained in this Part of the Act, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding-up companies formed under this Act; but an unregistered company shall not, except in the event of its being wound-up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

Buckley, pp. 415, 416.

(a) ss. 126—179, and ss. 204—221.

Where proceedings are pending for winding-up an unregistered company, all the provisions of Part IV. of the "Companies Act," other than those expressly excepted, are applicable; the direction in this section that an "unregistered company shall not, except in the event of its being wound-up, be deemed to be a company under this Act," was not intended to confine the application of the Act to a company which has been actually ordered to be wound-up: *Eudow v. Great Britain Mutual Life Ass. Soc.*, 17 Ch. Div. 600.

Repeal of Acts.

249. After the commencement of this Act, the Acts eleventh Victoria number nineteen and seventeenth Victoria number nine shall be repealed, but such repeal shall not affect:—

- (1) Anything previously duly done under either of the said Sect. 251. Acts.
- (2) Any right or privilege acquired or liability incurred under either of the said Acts.
- (3) Any penalty, forfeiture or other punishment incurred in respect of any offence against either of the said Acts.

In the Eng. Act a separate Part (Part IX.) is concerned with "Repeal of Acts and Temporary Provisions."

The Act 11 Vict. No. 19 was entitled "An Act for facilitating the winding-up of Joint Stock Companies unable to meet their pecuniary engagements;" and the Act 17 Vict. No. 9 was entitled "An Act to legalise Partnerships with limited liability," and is printed, Oliver, Vol. 2, p. 1668.

250. The repeal of the Act eleven Victoria number nineteen shall not affect any proceedings or matters which may have been commenced before, or are still pending under, the last-mentioned Act at the time this Act comes into operation, and all such proceedings and matters shall be proceeded with and determined in the same manner as if this Act had not been passed. Provided nevertheless that the Chief Commissioner of Insolvent Estates (a) shall subject to appeal to the Supreme Court as in insolvency exercise the powers and authority of the Supreme Court or a Judge thereof cumulatively, with all the powers and duties now vested in him by law for the purpose of winding-up and finally determining all such proceedings and matters so commenced or pending as aforesaid.

Law matters
pending under
Act 11 Vic.
No. 19.

It is to be presumed that there are not now any matters pending under the Act 11 Vict. No. 19.

(a) By the "Bankruptcy Act, 1887," "Chief Commissioner of Insolvent Estates" is to 51 Vic. No. 19, s. 127 (2), "Chief Com- mean "Judge in Bankruptcy."

251. This Act shall commence and come into operation immediately upon the expiration of one month after its passing.

Commencement
of Act.

The Act was passed on the 18th June, 1874.

Table A.
Art. 1.

FIRST SCHEDULE.

TABLE A.

**REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY
SHARES.**

These articles are, with one or two slight exceptions (which are noticed in their place), identical with those in the Eng. "Companies Act, 1862," 25 & 26 Vict. c. 89.

By s. 13 the companies there mentioned may adopt all or any of these regulations by their articles of association; by s. 14, in the case of a company limited by shares, if there are no articles, or so far as these are not excluded or modified, these regulations are to be deemed the regulations of the company. Any company to which they apply may alter them by special resolution (s. 82).

By s. 101 the Governor, with the advice of the Executive Council, may alter the tables and forms in Schedule I.; but it is believed that no alterations have been made; see note to that section. By s. 240 companies coming under Part VI. of the Act may by special resolution adopt these articles, otherwise they do not apply to companies under that part.

Shares (a).

Joint holders'
receipts.

1. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(a) *Supra*, s. 20; *infra*, Art. (46).

Share certifi-
cate.

2. Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate (a) under the common seal of the company, specifying the share or shares held by him, and the amount paid-up thereon.

(a) s. 29.

Renewal of
share certifi-
cate.

3. If such certificate is worn out or lost it may be renewed on payment of one shilling or such less sum as the company in general meeting may prescribe.

*Call on Shares.***Table A.
Art. 6.**

4. The directors may from time to time make such calls upon the members (a) in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice (b) at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

Buckley, pp. 421—427.

(a) Defined by s. 21.

(b) Arts. (95)—(97), as to service of notice.

By s. 15 a call made under the articles in a going concern, and by s. 127 a call made in a winding-up, are specialty debts.

See s. 100 *supra*, for a form of declaration in an action to recover a call.

A call made by directors not duly appointed is invalid: *Garden Gully Co. v. Invalid. McLister*, 1 App. Cas. 39; or when there is not a quorum present: *semble*, *Howbeach Coal Co. v. Teague*, 5 H. & N. 151. As to quorum see Art. (66) and note. A statement that "no further calls are contemplated" affords no defence to an action for calls: *Accidental and Marine Insee. Corporation v. Davis*, 15 L.T. 182.

Where a transfer has been made and registered after a call has been made, When payable. but before it is payable, *semble*, the transferor is liable for the call: *Re China Steamship Co., Dawes' Case*, 38 L.J. Ch. 512. But see Arts. (6), (10); and consider *In re Cawley & Co.*, 42 Ch. Div. 209; where it was also held that a call is not validly made until the date at which it is payable is fixed.

5. A call shall be deemed to have been made at the time when Date of call. the resolution of the directors authorising such call was passed.

Buckley, pp. 427, 428.

6. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of ten pounds per centum per annum from the day appointed for the payment thereof to the time of the actual payment.

Interest on calls in arrear.

In the Eng. Act the rate is five per cent.

Buckley, p. 428.

Where a notice to a shareholder claimed interest from the date of call, and not of payment, a forfeiture on non-payment was held invalid; *semble*, the date of payment should be formally fixed by the directors, not by mere verbal notice to the secretary: *Johnson v. Lyttle's Iron Agency*, 5 Ch. Div. 687, and see note to article (4).

Table A.**Art. 7.**

Power to receive
calls in advance.

7. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys due upon the shares held by him beyond the sums actually called for, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Buckley, pp. 428, 429.

Transfers of Shares (a).

Transfers of
shares.

8. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register-book in respect thereof.

Buckley, pp. 429—433.

(a) s. 20.

Stamp on
transfer.

The stamp duty on transfer on sale of shares of any company in New South Wales is sixpence for every £10 of the consideration money—"Stamp Duties Act" of 1880, 44 Vict. No. 3, Sch. 1; and anyone receiving a transfer of shares not duly stamped, without causing the same to be stamped, is liable to a penalty not exceeding ten pounds: *ib. s. 62*.

Deed.

The article does not say that transfers are to be by deed; *semble*, they need not be so, *s.p. Sargent*, 17 Eq. 273. But if articles do require transfer by deed, a transfer signed leaving blanks, as for the name of the transferee, is not a good deed; *Société Générale v. Walker*, 11 App. Cas. 20; but is a good agreement for sale, enforceable in Equity: *Morris v. Cannan*, 4 D.F. & J. 581.

A transfer executed in blank, with deposit of the certificates, constitutes a good equitable security; and, notwithstanding s. 28, it would seem to be advisable to give the company notice of the charge: *Bradford Banking Co. v. Briggs*, 12 App. Cas. 29. And see *Roots v. Williamson*, 38 Ch. D. 485.

Where the articles provided that transfers should be by deed, and a transfer purported to be sealed and delivered but there was no seal, held, it was no deed; *In re Balkis Consolidated Co.*, W.N. (1888) 8. Shares transferable by delivery are illegal: *semble*, *Princess of Reuss v. Bos*, L.R. 5 H.L. 176. And see ss. 59, *et seq.*

Form of
transfer.

9. Shares in the company shall be transferred in the following form:—

I A.B. of _____ in consideration of the sum of
pounds paid to me by C.D. of _____
do hereby transfer to the said C.D. the share [or shares]

numbered standing in my name in the **Table A.**
 books of the company to hold unto **Art. 12.**
 the said C.D., his executors, administrators, and assigns,
 subject to the several conditions on which I held the same
 at the time of the execution hereof; and I the said C.D.
 do hereby agree to take the said share [or shares]
 subject to the same conditions. As witness our hands
 the day of

10. The company may decline to register any transfer of **Transfer by**
 shares made by a member who is indebted to them. **indebted**
member.

Buckley, pp. 434—436.

And see *Lobb v. A.S.N. Co.*, 7 S.C.R. 278; S.C. 10 S.C.R. 1. But if the transfer be in fact registered it is valid: *In re Hoylake Railway Co.*, *ex p. Littledale*, 9 Ch. 257.

But it seems doubtful whether a member is to be considered indebted in respect of a call made but not yet payable; it would seem advisable for the company to meet this and other cases of indebtedness of a member by inserting fuller provisions for its protection in the articles.

11. The transfer-book shall be closed during the fourteen **Closing transfe**
 days immediately preceding the ordinary general meeting in **books.**
 each year (a).

(a) s. 81.

Transmission of Shares.

12. The executors or administrators of a deceased member shall **Shares devolv-**
 be the only persons recognised by the company as having any **ing by death.**
 title to his share.

Buckley, pp. 437, 438.

See ss. 128, 164, 158, 22.

"The case of trustees who take a transfer of shares in their names differs, **Executors.**
 in principle, from that of executors, who merely intimate their title as
 executors to a company, in order to claim and exercise the rights which belong
 to them as the legal representatives of their testator . . . Trustees have not, in
 any proper sense of the word, a representative character, but executors have . .
 Having representative rights, it is impossible that they should not be entitled
 to produce the legal evidence of them to the company, for the purpose of
 having their title in some way recorded and recognised, without making
 themselves personally liable:" *per* Lord Selborne, *Buchan's Case*, 4 App. Cas.
 549.

But executors may, by accepting the shares themselves, make themselves personally liable; though they may make a valid transfer without becoming so liable; s. 22. As to liability of executors in a winding-up, see ss. 128, 158, 164.

Table A. 13. Any person becoming entitled to a share in consequence of the death (a), bankruptcy (b), or insolvency (c), of any member, or in consequence of the marriage of any female member (d), may be registered as a member upon such evidence being produced as may from time to time be required by the company.

Persons entitled by death, bankruptcy, or marriage.

(a) s. 128. reference is to insolvency only.
 (b) "Bankruptcy" is copied into (c) ss. 127, 129; and notes thereto.
 this article from the Eng. Act, though (d) s. 130.
 throughout the N.S.W. Act the

Such person may elect nominee,

14. Any person who has become entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may instead of being registered himself elect to have some person to be named by him registered as a transferee of such shares.

See notes to Art. (13).

And as to the official assignee in bankruptcy, see "Bankruptcy Act, 1887," 51 Vict. No. 19, ss. 59 (3), 62 (1); under s. 59 (3) the official assignee has power of transferring the shares to the same extent as the bankrupt himself had; under s. 62 (1) the official assignee may disclaim the shares, which disclaimer determines from its date the rights and liabilities of the bankrupt and his estate in the shares. And see note to s. 127.

and transfer to him.

15. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such shares.

Evidence of title.

16. The instrument of transfer shall be presented to the company accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

Forfeiture of Shares.

Forfeiture of shares.

17. If any member fails to pay any call on the day appointed for payment thereof, the directors may at any time thereafter during such time as the call remains unpaid, serve a notice (a) on him, requiring him to pay such call, together with the interest (b) and any expenses that may have accrued by reason of such non-payment.

(a) Arts. (95)—(97), as to service. (b) Art. (6).

18. The notice shall name a further day on or before which such call, and all interest and expenses that have accrued by reason of such non-payment, are to be paid; and shall also name the place where payment is to be made (the place so named being either the registered office (a) of the company or some other place at which calls of the company are usually made payable); and shall also state that in the event of non-payment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.

Table A.
Art. 21.

Contents of
notice.

(a) s. 71.

19. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited, by a resolution of the directors to that effect.

Resolution to
forfeit.

Buckley, pp. 439—451.

A company whose articles do not give it the power to cancel or accept a surrender of shares, may acquire such power by special resolution: *Teasdale's Case*, 9 Ch. 54. But every case of surrender must be looked at and decided on its own merits, and in the light of the recent decision of *Treor v. Whitworth*, 12 App. Cas. 409. Apart from the provisions of the articles, directors have no power to release shareholders from their shares: *Stanhope's Case*, 1 Ch. 161, one of the cases in the winding-up of the *Agriculturist Cattle Insurance Co.*, the decisions in which are collected at pp. 446, 447, Buckley.

Surrender.

Must be under
articles.

A clause in the articles providing that the shares of any member taking or threatening to take action against the company or the directors should be forfeited is invalid: *Hope v. International Financial Society*, 4 Ch. Div. 327.

Although articles provide that shares shall be *ipso facto* forfeited on non-payment of calls, yet the directors must by some act declare the shares forfeited: *Moore v. Rawlins*, 6 O.B. (N.S.) 310; see *Bigg's Case*, 1 Eq. 309.

20. Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting (a) thinks fit.

Forfeited
shares property
of company.

(a) Arts. (29)—(43).

21. Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

Calls on for-
feited shares
still due.

Buckley, p. 452.

But in a winding-up, the shareholder cannot be put upon the list of contributories in respect of such calls.

Table A.
Art. 22.

Title to forfeited shares.

22. A statutory declaration in writing, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Under this Act the company, whose property forfeited shares become—Art. (20)—can give a purchaser a good title unaffected by any irregularity in the forfeiture.

Conversion of Shares into Stock.

Power to convert.

23. The directors may, with the sanction of the company previously given in general meeting (a), convert any paid-up shares into stock (b).

(a) Arts. (29)—(43).

(b) ss. 11, 26, 27.

Transfer of stock.

24. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer (a) their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

(a) s. 20 Arts. (8)—(11); and see s. 59.

Stockholders' dividends and votes.

25. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interest in such stock; and such interest shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages, for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal

amount in the capital of the company ; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

**Table A.
Art. 29.**

Increase in Capital (a).

26. The directors may, with the sanction of a special resolution (b) of the company previously given in general meeting (c) increase its capital by the issue of new shares (a), such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

Issue of new shares ;

(a) ss. 11, 32.

(b) s. 83.

(c) Arts. (29)—(48).

27. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice (a) specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

to be offered to members ;

(a) Arts. (95)—(97).

28. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

to be considered as part of original contract.

General Meetings (a).

29. The first general meeting shall be held at such time, not being more than six months (b) after the registration of the company, and at such place as the directors may determine.

First general meeting.

(a) ss. 31, 34, 98.

(b) But see s. 70.

Table A.
Art. 30.

Subsequent
general
meetings.

30. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

The liquidators in a voluntary winding-up are to summon a general meeting of the company at the end of the first and of each succeeding year from the commencement of the winding-up: s. 190.

Extraordinary
general meet-
ings;

31. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

when to be
called.

32. The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

Where one director had not had sufficient notice of the board meeting at which it was decided to call the extraordinary meeting, the extraordinary meeting so called was competent to act: *Browne v. La Trinidad*, 87 Ch. Div. 1.

Members
asking for,
to state object.

33. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

34. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting; if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting (a).

(a) See s. 84.

Proceedings at General Meetings.

Notice of
meetings.

35. Seven days' notice (a) at the least, specifying the place, the day, and the hour of meeting, and in case of special business (b) the general nature of such business, shall be given to the members in manner hereinafter mentioned (c) or in such other manner, if any, as may be prescribed by the company in general

meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting. Table A.
Art. 39.

(a) s. 84.
(b) Art. (86).

(c) Arts. (95)—(97).

Neither the day of notice, nor the day of service, count in the seven days: Buckley, p. 456.

Proper notice must be given of business to be transacted at an extraordinary meeting; otherwise the resolutions may be invalid.

36. All business shall be deemed special that is transacted at an extraordinary meeting (a), and all that is transacted at any ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance-sheets, and the ordinary report of the directors. Special business.

(a) Art. (81).

37. No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members (a) is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows; that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed twenty. Quorum.

(a) See Art. (66) for quorum of directors.

38. If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place; and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*. Adjournment, if no quorum.

A resolution passed at a meeting at which a proper number of persons is not present would apparently be invalid: *Howbeach Coal Co. v. Teague*, 5 H. & N. 151; or at a meeting improperly convened: *Harben v. Phillips*, 23 Ch. Div. 14; but see this case distinguished: *Browne v. La Trinidad*, 37 Ch. Div. 1.

39. The chairman (if any) of the Board of Directors shall preside as chairman (a) at every general meeting of the company. Chairman of meeting.

(a) s. 84.

Table A. 40. If there is no such chairman, or if at any meeting he is
Art. 40. not present within fifteen minutes after the time appointed for
 holding the meeting, the members present shall choose some one
 of their number to be chairman (a).

f Chairman of
 Board not
 present.

(a) s. 84.

Adjournment
 by Chairman.

41. The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

Buckley, p. 458.

Resolution, how
 carried

42. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings (a) of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

Buckley, pp. 458, 459.

(a) s. 88.

The voting is by show of hands, unless a poll is demanded; and goes by numerical majority: *In re Horbury Co.*, 11 Ch. Div. 109. A proxy to vote is not a proxy to demand a poll: *In re Haven G.M. Co.*, 20 Ch. Div. 151.

Where the articles provided that if a poll were demanded, it should be held at a time and place to be fixed by the directors within seven days after the date of the meeting; and directors resolved previously to a meeting that if a poll were demanded it should be taken then and there; such a proceeding was held illegal: *In re British Flax Producer's Co.*, W.N. (1889) 7.

Poll.

43. If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting; and in the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

Votes of Members.

Votes.

44. Every member shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond

the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares (a). **Table A. Art. 49.**

Buckley, pp. 459—462.

(a) s. 84.

A shareholder may vote upon a question in which he is personally interested: *semble, London and Mercantile Discount Co.*, 1 Eq. 277, at least, in the absence of anything in the articles to the contrary.

This article defines the voting power of each member; that is, in case a poll is demanded, as otherwise the voting is by numerical majority (Art. (42), note). A member of the company is the person whose name is on the register of shareholders, and the register is the only evidence of a member's right to vote, and that is irrespective of questions of beneficial ownership; and votes cannot be rejected on the ground that shares have been transferred in such a way as to give increased voting power to certain members; nor on the ground that the object of certain votes being given is to ruin the company or that votes are given from some improper motive: *Pender v. Lushington*, 6 Ch. D. 70. Powers, how exercised.

45. If any member is a lunatic or idiot he may vote by his committee or other legal curator. Vote of lunatic

46. If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other shall be entitled to vote in respect of the same. of jointholders;

47. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote (a). of member in arrears; and of transferee.

(a) *Of* s. 185, as to presenting a winding-up petition.

48. Votes may be given either personally or by proxy.

Proxies

49. The instrument appointing a proxy shall be in writing, under the hand of the appointer, or if such appointer is a corporation, under their common seal, and shall be attested by one or more witness or witnesses: No person shall be appointed a proxy who is not a member of the company. to be in writing.

Table A. 50. The instrument appointing a proxy shall be deposited at
Art. 50. the registered office of the company not less than seventy-two
 and lodged hours before the time for holding the meeting at which the
 before meeting. person named in such instrument proposes to vote, but no
 instrument appointing a proxy shall be valid after the expiration
 of twelve months from the date of its execution, unless it
 purports to appoint a proxy to act for the appointer during his
 absence from the colony.

Form of proxy. 51. Any instrument appointing a proxy shall be in the follow-
 ing form :—

Company (limited).

I, of in the Colony of being a member
 of the company, (limited), and entitled to
 vote [*or* votes], hereby appoint of
 as my proxy, to vote for me and on my behalf at the
 ordinary [*or extraordinary as the case may be*] general
 meeting of the company to be held on the day
 of , and at any adjournment thereof [*or at*
 any meeting of the company that may be held in the
 year *or* during my absence from the Colony of
 New South Wales].

As witness my hand, this day of
 Signed by the said in the presence of

Buckley, pp. 463, 464.

The right to vote by proxy does not exist at common law, but must be
 conferred by the articles: *Harben v. Phillips*, 23 Ch. Div. 14, at p. 32.

No stamp is required on an instrument appointing a proxy.

Directors.

Number, names 52. The number of the directors and the names of the first
of first direc-
tors. directors shall be determined by the subscribers of the memo-
 randum of association.

Subscribers of 53. Until directors are appointed the subscribers of the
memorandum
to be directors
until appoint-
ment. memorandum of association shall be deemed to be directors.

Buckley, pp. 464, 465.

These articles do not, but articles usually do, prescribe a qualification for
 directors.

An act done by a meeting of a minority of the subscribers of the memo-
 randum is invalid: *London and Southern Counties Freehold Co.*, 31 Ch. D. 233.

54. The future remuneration of the directors, and their re- **Table A.**
muneration for services performed previously to the first general **Art. 55.**
meeting, shall be determined by the company in general meeting. **Remuneration.**

Buckley, pp. 465, 466.

This remuneration is in the nature of a gratuity; and unpaid fees due to Is gratuity.
directors are due to them in their character of members, and they are to be
postponed to outside creditors under s. 36 (7): *In re Leicester Club Racecourse*
Co., s.p. Cannon, 30 Ch. D. 629. Not so the salary of a managing director: *Re*
Dale & Plant, 43 Ch. D. 255.

"The granting of pensions and gratuities is only a mode of remunerating the
officers of the society for their services; and as such a power is necessarily
incident to the general powers of management of the society, the members can
remunerate their officers in whatever way they may consider most conducive to
the interests of the society and to the most efficient management of the
business, and, therefore, a proposed grant for a superannuation fund is not
illegal or *ultra vires*": per Owen, Ch. J. Eq., in *McElhone v. A.M.P. Society*, 10
N.S.W. L.R. Eq. 50.

A company, whose articles of association provided for the directors' remunera-
tion at a certain date, altered these articles by special resolution, which purported
to make the altered rate of remuneration effective from a date prior to the special
resolution; but the Court of Appeal held that the directors were entitled to
remuneration at the old rate up to the date of the resolution: *Swabey v. Port*
Darwin G.M. Co., 1 Megons's Companies Cases, 385 (1889).

A grant of a pension to the family of a deceased officer of a bank made in general
meeting, has been held valid: *Henderson v. Bank of Australasia*, 40 Ch. D. 170.

Powers of Directors.

55. The business of the company shall be managed by the **Management by**
directors, who may pay all expenses incurred in getting up and **directors.**
registering the company, and may exercise all such powers of
the company as are not by the foregoing Act, or by these articles,
required to be exercised by the company in general meeting,
subject nevertheless to any regulations of these articles, to the
provisions of the foregoing Act, and to such regulations, being
not inconsistent with the aforesaid regulations or provisions, as
may be prescribed by the company in general meeting; but no
regulation made by the company in general meeting shall invali-
date any prior act of the directors which would have been valid
if such regulation had not been made (a)

Buckley, pp. 466—477.

(a) s. 36; Art. (71).

This article formally vests in the directors those powers which, by virtue of **Powers of**
their office, they must necessarily possess; that is, full powers of management of **directors.**
the company subject to the restrictions of the Act, and of the articles, if any

Table A.
Art. 55.

restrictions are imposed by the articles. The company cannot itself act, it must act through other persons, and those persons the directors: *Ferguson v. Wilson*, 2 Ch. 77, at p. 89.

As regards third persons.

Directors are variously described as the agents, or as trustees, or as managing partners of the company. They are agents of the company, and may bind the company by any acts which are within the scope of the objects of the company; and this as regards third persons acting *bond fide* with the company, although, in fact, as between themselves and the other shareholders the directors may have exceeded their powers: *Royal British Bank v. Turquand*, 6 E. & B. 327. And the company is responsible for the false and fraudulent misrepresentations of its agents acting in the course of its business and for its benefit; but not where the misrepresentations are for the agents' own private ends: *British Mutual Co. v. Charnwood Forest Co.*, 18 Q.B. Div. 714; and see *Prince v. Nowlan*, 5 S.C.R. 304, 310.

Are trustees.

Further, directors are trustees for the company of the powers committed to them, and may be compelled personally to refund moneys of the company misapplied by them in the course of their management, though not where there has been on their part mere innocent mistake, unless it amount to *crassa negligentia*. In *Re Oxford Benefit B. & I. Society*, 35 Ch. D. 503, directors were ordered to repay £40,000 improperly paid by them as dividends; and the following propositions were said by Kay, J., to be established:—

Dividends out of capital.

1. That directors are quasi trustees of the capital of the company.
2. Directors who improperly pay dividends out of capital are liable to repay such dividends personally upon the company being wound-up.
3. This liability may be enforced by a creditor or by the liquidator under s. 165 (i.e., s. 216 N.S.W.), or by the incorporated company before a winding-up.
4. The acquiescence of the shareholders does not affect the creditors in such a case.
5. Such an act is a breach of trust, and the remedy is not barred by the "Statute of Limitations." *Ib.* at p. 509.

Knowledge of directors.

It is the duty of a director, at any rate, to know and understand the effect of something done at a board meeting at which he is present, and in doing which he concurs: *Land Credit Co. of Ireland v. Fermoy*, 8 Eq. 7; although he will not be taken to have notice of other matters, as entries in the books of which he is, in fact, ignorant: *Hallmark's Case*, 9 Ch. Div. 329.

Secret profits.

A director must account for a secret profit he has made in his office as director, as for a gift made by a promoter while there were questions between the promoter and the company: *Eden v. Ridsdale's Railway Lamp and Lighting Co.*, 23 Q.B. Div. 368.

Directors were ordered to repay dividends, directors' remuneration and bonuses to manager, improperly paid out of capital: *Leeds Estate B. & I. Co. v. Shepherd*, 36 Ch. D. 787.

Placing shares.

Money paid as commission to a stockbroker for placing shares is an improper application of capital; such payment is *ultra vires*, and directors will be ordered to refund the money: *Re Faure Electric Accumulator Co.*, 40 Ch. D. 141.

Right to indemnity.

But, on the other hand, directors in their character of trustees are entitled to indemnity from their *cestuis que trustent* for expenses *bond fide* incurred for the benefit of the company: *German Mining Co., ex p. Chippendale*, 4 D.M. & G. 19; and see *Toohy v. McCulla*, 10 N.S.W. L.R. Eq. 264, which was a suit by the

directors of a mining company against certain shareholders and the personal representatives of certain deceased shareholders, for contribution in respect of an overdraft obtained by the directors at a bank, and afterwards paid off by them, and in respect of certain legal expenses and costs paid by them to their solicitors. It was held by Owen, Ch. J. Eq., that they were entitled to such contribution, the money having been obtained and the legal expenses incurred for the benefit of the company and in accordance with its objects, and the shareholders having ratified the action of their directors. But the principle acted on in *e.p. Chippendale, ubi sup.*, ought not to be extended: *per Giffard, L.J., Re National Permanent Building Society, e.p. Williamson*, 5 Ch. 818.

Table A.
Art. 57.

56. The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

57. The office of directors shall be vacated:—

Disqualifi-
cation.

If he holds any other office or place of profit under the company;

If he becomes bankrupt or insolvent;

If he is concerned in or participates in the profits of any contract with the company.

But the above rules shall be subject to the following exceptions: That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote his vote shall not be counted.

Buckley, pp. 477—479.

The third ground of disqualification rests on the obvious conflict of duties which would arise in the case of a director who had at stake interests of his own directly opposed to those of the company.

Apart from such disqualification, "the principle is firmly and well established, that a person holding a fiduciary position with regard to a company cannot obtain for himself a benefit derived from the employment of the funds of the company in any matter in which he, the director, as such director, may happen to be engaged": *Imperial Mercantile Credit Association v. Coleman*, 6 Ch. at p. 566; *S.C. L.R. 6 H.L.* at p. 198. And the reasons for this are "that the company have a right to the services of their directors, whom they remunerate by considerable payments; they have a right to their entire services, they have a right to the voice of every director, and to the advice of every director in giving his opinion upon matters which are brought before the board for consideration; and that the general rule that no trustee can derive any benefit from dealing with those funds of which he is a trustee applies with still greater force to the state of things in which the interest of the trustee deprives the

Table A. company of his benefit and assistance": *S.C. L.R.* 6 Ch. at pp. 567, 568.
Art. 58. Although, *semble*, the company could by the articles contract that directors might make such profit, *S.C.*

Where directors were prohibited from voting in respect of any contract in which they were personally interested, but had entered into such a contract, the company by an ordinary resolution had power to ratify it: *Grant v. United Kingdom Switchback Railways Co.*, 40 Ch. Div. 135.

Rotation of Directors.

Retirement.

58. At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

Buckley, pp. 479, 480.

This Art. gives the shareholders the right to substitute directors of their own election for the temporary directors appointed under Arts. (52), (53).

By Art. (39) the first general meeting must be held within six months after registration, and by Art. (81) such meeting will be an ordinary meeting; under this Art. the directors must retire from office at the first ordinary meeting. Under s. 70 of the Act, *q.v.*, a general meeting must be held within four months after registration; if this, therefore, be an ordinary meeting, the first directors will then retire, but an extraordinary meeting is a sufficient compliance with that section, and then their retirement may be postponed: *Lord Claud Hamilton's Case*, 8 Ch. 548.

Who to retire.

59. The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot: In every subsequent year the one-third or other nearest number who have been longest in office shall retire.

Re-eligible.

60. A retiring director shall be re-eligible.

Filling up vacancies.

61. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

Provisions in case vacancies are not filled.

62. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next

week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

**Table A.
Art. 66.**

63. The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

Number of directors.

64. Any casual vacancy occurring in the Board of Directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

Casual vacancies.

65. The company, in general meeting, may, by a special resolution (a), remove any director before the expiration of his period of office, and may by an ordinary resolution, appoint another person in his stead: The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Removal of director.

Buckley, pp. 481, 482.

(a) s. 83.

In the absence of such an article as this, a director appointed for a fixed time cannot be removed; but the articles must first be altered to give the power: *Imp. Hydropathic Co. v. Hampson*, 23 Ch. Div. 1.

Proceedings of Directors.

66. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business: Questions arising at any meeting shall be decided by a majority of votes: In case of an equality of votes the chairman shall have a second or casting vote: A director may at any time summon a meeting of the directors.

Directors' meetings—quorum—votes.

Buckley, pp. 482, 483.

When the articles do not prescribe the number of directors necessary to constitute a quorum, the number who usually act in conducting the business of the company will constitute a quorum: *Lyster's Case*, 4 Eq. 233.

Quorum.

Table A. At an irregularly called meeting, two out of four directors attended and resolved that two directors should form a quorum; they then made allotments; **Art. 67.** held, invalid: *Re Portuguese Copper Mines*, 42 Ch. Div. 160.

Chairman. 67. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

Committees. 68. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

The directors are hereby expressly given power to delegate; without which the rule *delegatus non potest delegare*, would apply to them: *Howard's Case*, 1 Ch. 561.

Chairman of committee. 69. A committee may elect a chairman of their meetings: If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

Proceedings of committee. 70. A committee may meet and adjourn as they think proper: Questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.

Acts of disqualified directors. 71. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

See s. 98.

Dividends.

72. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

Table A.
Art. 73.

Dividends.

And see s. 56.

Under this article dividends are to be paid on the shares irrespective of the amounts paid-up on them; though there is nothing to prevent a provision in the articles that the dividends should be in proportion to the amounts paid-up. And, *semble*, under this article dividends would, in the case of a company having shares of different denominations, be payable in proportion as well to the nominal amount as the number of the shares. As to this subject, see *Oakbank Oil Co. v. Crum*, 8 App. Cas. 65.

On the question, as to what sums are to be regarded as paid by way of dividend and what as capital, see *Bouch v. Sproule*, 12 App. Cas. 385; where the intention of the company is looked at, and a decision come to on the facts that the intention was to increase the capital of the company by the allotment of partially paid-up shares to each shareholder.

Where directors under similar articles to those in Table A, had applied certain profits to the construction of reproductive works, and thereupon proposed, instead of paying a dividend, to give the shareholders debenture bonds bearing interest, it was held by Stirling, J., that they could not do so, at any rate without the sanction of a special resolution, as dividends, if payable at all, were to be paid in cash: *Wood v. Odessa Waterworks Co.*, 42 Ch. D. 636.

73. No dividend shall be payable except out of the profits arising from the business of the company.

Out of profits

Buckley, pp. 486—491.

The question what may be properly regarded as "profits," available for distribution, seems to present considerable difficulty. The cases on the subject are collected in Buckley, *ubi sup.*; and in addition the case of *Lee v. Neuchatel Asphalts Co.*, 41 Ch. Div. 1, should be consulted on the question. In that case a company was formed to take over the rights of certain other companies in certain concessions granted by the Government of Neuchatel giving the right to work certain deposits of bituminous rock; and the question was, whether dividends could be paid, without making any allowance for the wasting nature of the property and without setting aside a sum to represent such waste. It was held that dividends could, under the circumstances, be so paid. "In considering whether this is to be treated as an honest division of profit, or as a division of capital under the guise of declaring a dividend, the Court will have regard to the provisions of the articles, although, of course, if these articles authorise not a mere division of profit, but a division of capital (using 'capital' in the proper sense of the word, by which I mean permanent assets, and assets not to be expended in providing for the profit earned by the company), such a provision will be *ultra vires* and void": *per* Cotton, L.J., at p. 19. "There is nothing at all in the Acts about how dividends are to be paid, nor how profits are to be reckoned; all that is left, and very judiciously

Table A. and properly left to the commercial world": *per* Lindley, L.J., at p. 21. "On
Art. 74. the other hand, if the working expenses exceed the current gains, you cannot
 divide your capital under the head of profits when there are no profits in any
 sense of the term;" at p. 24, referring to *Rance's Case*, 6 Ch. 104; *In re Oxford*
Benefit Building Society, 35 Ch. D. 512, and *Leeds Estate Building and Investment*
Co. v. Shepherd, 36 Ch. D. 787. But it must not appear "that for the purposes
 of fraud or for any other improper motive, a company has declared and paid a
 wholly illusive and improper dividend, and has thereby in effect taken away
 from its creditors a portion of the capital which was available for the debts of
 the creditors;" at p. 17, quoting from *Stringer's Case*, 4 Ch. 475, 488. But,
 finally, "If the Court sees that the directors and the company have acted fairly
 and reasonably in ascertaining whether this is a division of profits and not of
 capital, and then in what is really a matter of internal arrangement (if it is done
 honestly and does not violate any of the provisions of the articles) the Court is
 very unwilling to interfere with the discretion exercised by the directors, who
 have the management of the company, or with the powers exercised by the com-
 pany within the articles;" at p. 18.

Reserve fund. 74. The directors may, before recommending any dividend, set
 aside out of the profits of the company such sum as they think
 proper as a reserved fund to meet contingencies, or for equalising
 dividends, or for repairing or maintaining the works connected
 with the business of the company, or any part thereof; and the
 directors may invest the sum so set apart as a reserved fund upon
 such securities as they may select.

Debts due from 75. The directors may deduct from the dividends payable to
a member to be
deducted. any member all such sums of money as may be due from him to
 the company on account of calls or otherwise.

Notice of 76. Notice of any dividend that may have been declared shall
dividends; and
forfeiture. be given to each member in manner hereinafter (a) mentioned;
 and all dividends unclaimed for three years after having been
 declared, may be forfeited by the directors for the benefit of the
 company.

(a) Arts. (95)—(97).

Not to bear 77. No dividend shall bear interest as against the company.
interest.

Accounts.

Accounts. 78. The directors shall cause true accounts to be kept,—
 Of the stock-in-trade of the company;
 Of the sums of money received and expended by the
 company, and the matter in respect of which such
 receipt and expenditure takes place; and,

Of the credits and liabilities of the company ;
 The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection (a) of the members during the hours of business.

Table A.
Art. 82.

(a) s. 207, inspection by creditors 88—98 by inspectors in a going company and contributories in a winding-up ; ss. pany.

ss. 216—219 deal with delinquent officers, and see also “ Criminal Law Amendment Act.”

79. Once at the least in every year the directors shall lay before the company in general meeting, a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

Annual statement.

80. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters ; every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting ; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

What it shall contain.

81. A balance-sheet shall be made out in every year, and laid before the company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

Balance-sheet

82. A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter (a) directed to be served.

(a) Arts. (95)—(97).

Audit.

Table A.	83. Once at the least in every year, the accounts of the
Art. 83.	company shall be examined and the correctness of the balance-
Auditors ;	sheet ascertained, by one or more auditor or auditors.
appointment of.	84. The first auditors shall be appointed by the directors ; subsequent auditors shall be appointed by the company in general meeting.
	85. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.
Who may be auditors.	86. The auditors may be members of the company ; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company ; and no director or other officer of the company is eligible during his continuance in office.
When elected.	87. The election of auditors shall be made by the company at their ordinary meeting in each year.
Remuneration of.	88. The remuneration of the first auditors shall be fixed by the directors ; that of subsequent auditors shall be fixed by the company in general meeting.
Re-eligible.	89. Any auditor shall be re-eligible on his quitting office.
Casual vacan- cies.	90. If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.
Appointment by Registrar.	91. If no election of auditors is made in manner aforesaid the Registrar may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.
	In England the appointment here mentioned is by the Board of Trade.
Duties of auditors.	92. Every auditor shall be supplied with a copy of the balance- sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.
	In <i>Leeds Estate B. & I. Society v. Shepherd</i> , 36 Ch. D. 787, it was held that it is the duty of the auditor in auditing the accounts of the company not

to confine himself to verifying the arithmetical accuracy of the balance-sheet, but to inquire into its substantial accuracy, and to ascertain that it contained the particulars specified in the articles of association, and was properly drawn up so as to contain a true and correct representation of the company's affairs; and it was accordingly held that as certain improper payments by the directors were the natural and immediate consequence of breach of duty on the part of the manager and the auditor, they were liable in damages to the amount so paid.

**Table A.
Art. 96.**

93. Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company; he may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.

94. The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

95. A notice may be served by the company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

*Service of
notices.*

96. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

Table A.
Art. 97.

By post.

97. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.

Table A.

VI. Reserve fund.....		V. Cash and Investments.	12	Showing— The nature of investment and rate of interest The amount of cash where lodged and if bearing interest
VII. Profit and Loss ...	Showing— The amounts set aside from profits to meet contingencies		13	
Contingent liabilities ...	Showing— The disposable balance for payment of dividends, &c. Claims against the company not acknowledged as debts Moneys for which the company is contingently liable			

(a) Table A. Arts. (81), (88).

Table B.

TABLE B (a).

TABLE OF FEES to be paid to the REGISTRAR OF JOINT STOCK COMPANIES by a company having a capital divided into shares.

	£	s.	d.
For registration of a company whose nominal capital does not exceed £1,000 a fee of.....	5	0	0
For registration of a company whose nominal capital exceeds £1,000 the above fee of £5 with the following additional fees regulated according to the amount of nominal capital (that is to say) —			
	£	s.	d.
For every £1,000 of nominal capital or part of £1,000 after the first £5,000 up to £100,000	0	5	0
For every £1,000 of nominal capital or part of £1,000 after the first £100,000	0	1	0
For registration of any increase of capital made after the first registration of the company the same fees per £1,000 or part of a £1,000 as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no company shall be liable to pay in respect of nominal capital on registration or afterwards any greater amount of fees than £50 taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.			
For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered other than the memorandum of association	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies a fee of	0	5	0

TABLE C (b).

TABLE OF FEES to be paid to the REGISTRAR OF JOINT STOCK COMPANIES by a company not having a capital divided into shares.

	£	s.	d.
For registration of a company whose number of members as stated in the articles of association does not exceed twenty	2	0	0
For registration of a company whose number of members as stated in the articles of association exceeds twenty but does not exceed one hundred.....	5	0	0
For registration of a company whose number of members as stated in the articles of association exceeds one hundred but is not stated to be unlimited the above fee of £5 with an additional 5s. for every fifty members or less number than fifty members after the first hundred.			
For registration of a company in which the number of members is stated in the articles of association to be unlimited a fee of	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every fifty members or less than fifty members of such increase	0	5	0
Provided that no one company shall be liable to pay on the whole a greater fee than £20 in respect of its number of members taking into account the fee paid on the first registration of the company.			
For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered other than the memorandum of association.....	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies a fee of.....	0	5	0

(a) ss. 16, 101.

(b) s. 232.

FORM D (a).

Form D.

FORM OF STATEMENT referred to in Part III. of the Act.

- * The capital of the company is , divided into shares of each
The number of shares issued is
Calls to the amount of pounds per share have been made, under which
the sum of pounds have been received.
The liabilities of the company on the first day of January [or July] were :—
Debts owing to sundry persons by the company :—
On judgment, £
On specialty, £
On notes or bills, £
On simple contracts, £
On estimated liabilities, £
The assets of the company on that day were :—
Government securities [*stating them*], £
Bills of exchange and promissory notes, £
Cash at the bankers, £
Other securities, £

* If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

(a) *ss.* 76, 101.

SECOND SCHEDULE (a).

Form A.**FORM A.****MEMORANDUM OF ASSOCIATION of a Company limited by shares (b).**

1st. The name of the company is "The Eastern Steam Packet Company, (limited)."

2nd. The registered office of the company will be situate in Sydney.

3rd. The objects (c) for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses, and descriptions of Subscribers.	Number of shares taken by each subscriber.
1. John Jones of Merchant.....	200
2. John Smith of ".....	25
3. Thomas Green of ".....	30
4. John Thompson of ".....	40
5. Caleb White of ".....	15
6. Andrew Brown of ".....	5
7. Caesar White of ".....	10
Total shares taken.....	325

Dated the 22nd day of November, 18 ..

Witness to the above signatures—

(A.B., No. 18, Pitt-street, Sydney.)

(a) s. 101.

(b) s. 7.

(c) If one of the objects of the company is to carry out certain agreements made on behalf of the company by promoters or trustees for the intended company, the memorandum sometimes states that to be the case. But such a statement does not of itself

bind the company by way of ratification: see *Kelner v. Baxter*, L.R. 2 C.P. 174. But see on this subject, in addition to cases cited, Buckley, p. 498, *In re Patent Ivory Manufacturing Co.*, 38 Ch. D. 156; and consider *In re Cattinach Chemical Co.*, *Bennett's Case*, 10 N.S.W. L.R. 290, cited *supra*, note to s. 57.

FORM B.**MEMORANDUM AND ARTICLES OF ASSOCIATION of a Company limited by Guarantee, and not having a Capital divided into Shares (a).****Memorandum of Association.**

1st. The name of the company is the "Mutual Marine Association (limited)."

2nd. The registered office of the company will be situate in Sydney.

3rd. The objects for which the company is established are, "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

(a) ss. 8, 13.

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound-up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding ten pounds. **Form B.**

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

Names, Addresses, and Description of Subscribers.

1. John Jones of	Merchant
2. John Smith of	"
3. Thomas Green of	"
4. John Thompson of	"
5. Caleb White of	"
6. Andrew Brown of	"
7. Caesar White of	"

Dated the 22nd day of November, 18

Witness to the above signatures—
(A.B., No. 18, Pitt-street, Sydney.)

ARTICLES OF ASSOCIATION to accompany preceding MEMORANDUM OF ASSOCIATION (b).

1. The company for the purpose of registration, is declared to consist of five hundred members (c).
2. The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

4. The first general meeting shall be held at such time, not being more than three months (d), after the incorporation of the company, and at such place, as the directors may determine.
5. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed a general meeting shall be held on the first Monday in February in every year (e), at such place as may be determined by the directors.
6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.
7. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.
8. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.
9. Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting: If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members, may themselves convene a meeting.

(b) s. 13.

(c) As to increase of members, see s. 32.

(d) see s. 70.

(e) see s. 81.

*Proceedings at General Meetings.***Form B.**

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting: and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

12. No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of members is present at the commencement of such business, and such quorum shall be ascertained as follows: that is to say, if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

13. If within one hour after the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved: In any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same the members present shall choose some one of their own number to be chairman of such meeting.

16. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At a general meeting, unless a poll is demanded by at least five members a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolutions of the company in general meeting.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot he may vote by his committee or other legal curator.

21. No member shall be entitled to vote at any meetings unless all moneys due from him to the company have been paid.

22. Votes may be given either personally or by proxies: A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

23. No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following terms:—

Company (limited).
I of in the Colony of , being a member
of the Company, (limited), hereby appoint of
my proxy to vote for me and on my behalf at the
ordinary [or extraordinary, as the case may be] general meeting of the

company to be held on the _____ day of _____, and at any **Form B.**
 adjournment thereof to be held on the _____ day of _____
 next [or at any meeting of the company that may be held in the year .]
 As witness my hand, this _____ day of _____
 Signed by the said _____ in the presence of _____

Directors.

25. The number of directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act (*sic*) be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting. But no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

[Here insert rules as to mode in which business of insurance is to be conducted.]

Accounts.

29. The accounts of the company shall be audited by a committee of five members to be called the audit committee.

30. The first audit committee shall be nominated by the directors out of the body of members.

31. Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.

32. The audit committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

33. The audit committee shall have a list delivered to them of all books kept by the company, and they shall at all reasonable times have access to the books and accounts of the company; they may, at the expense of the company, employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the company.

34. The audit committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations of the company, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanation or information from the directors whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

35. A notice may be served by the company upon a member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

36. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed, and put into the post office.

Winding-up.

Form B. 87. The company shall be wound-up voluntarily whenever an extraordinary resolution, as defined by the "Companies Act" (a) is passed requiring the company to be wound-up voluntarily.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of	Merchant.
2. John Smith of	"
3. Thomas Green of	"
4. John Thompson of	"
5. Caleb White of	"
6. Andrew Brown of	"
7. Cæsar White of	"

Dated the 22nd day of November, 18 .
 Witness to the above signatures—
 (A.B., Pitt-street, Sydney.)

FORM C.

MEMORANDUM AND ARTICLES OF ASSOCIATION of a Company limited by Guarantee, and having a Capital divided into shares (b).

Memorandum of Association.

- 1st. The name of the company is "The Royal Hotel Company, (limited)."
- 2nd. The registered office of the company will be situate in Sydney.
- 3rd. The objects for which the company is established are "the providing hotels for the accommodation of travellers and the doing all such other things as are incidental or conducive to the attainment of the above object."
- 4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound-up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and the costs, charges, and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of	Merchant.
2. John Smith of	"
3. Thomas Green of	"
4. John Thompson of	"
5. Caleb White of	"
6. Andrew Brown of	"
7. Cæsar White of	"

Dated the 22nd day of November, 18 .
 Witness to the above signatures—
 (A.B., Pitt-street, Sydney.)

Articles of Association to accompany preceding Memorandum of Association (c).

1. The capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.
2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares.

(a) s. 180.

(b) ss. 8, 13.

(c) s. 13.

3. The directors may, with the sanction of the company in general meeting, **Form D.** cancel any shares belonging to the company.

4. All the articles of Table A. shall be deemed to be incorporated with these articles and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses, and descriptions of Subscribers.		Number of shares taken by each subscriber.
1. John Jones of	Merchant.....	290
2. John Smith of	"	25
3. Thomas Green of	"	30
4. John Thompson of	"	40
5. Caleb White of	"	15
6. Andrew Brown of	"	5
7. Caesar White of	"	10
Total shares taken		325

Dated this 22nd day of November, 18 .

Witness to the above signatures—
(A.B., Pitt-street, Sydney.)

FORM D.

MEMORANDUM AND ARTICLES OF ASSOCIATION of an unlimited Company having
a Capital divided into shares (d).

Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The registered office of the company will be situate in Sydney.

3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotyped plates, of which method John Smith, of London, is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of	Merchant.
2. John Smith of	"
3. Thomas Green of	"
4. John Thompson of	"
5. Caleb White of	"
6. Andrew Brown of	"
7. Abel Brown of	"

Dated 22nd day of November, 18 .

Witness to the above signatures—
(A.B., Pitt-street, Sydney.)

Articles of Association to accompany the preceding Memorandum of Association (e)
Capital of the Company.

The capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

(d) ss. 9, 13.

(e) s. 13.

Form D.

Application of Table A.

All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.		Number of shares taken by each subscriber.
1. John Jones of	Merchant.....	1
2. John Smith of	"	5
3. Thomas Green of	"	2
4. John Thompson of	"	2
5. Caleb White of	"	3
6. Andrew Brown of	"	4
7. Abel Brown of	"	1
Total shares taken.....		18

Dated the 22nd day of November, 18 .

Witness to the above signatures—

(A.B., Pitt-street, Sydney.)

FORM E. As required by the Second Part of the Act (f).

Summary of capital and shares of the company, made up to the day of

Nominal capital £ divided into shares of £ each.

Number of shares taken up to the day of

There has been called up on each share £

Total amount of calls received £

Total amount of calls unpaid £

List of persons holding shares in the company on the day of , and of persons who have held shares therein at any time during the year immediately preceding the said day of showing their names and addresses and on (sic) account of the shares so held.

Folio in Register Ledger containing particulars.	Names, Addresses, and Occupations.				Account of Shares.				Remarks	
	Surname.	Christian Name.	Address.	Occupation.	Shares held by existing members on the day of	Additional shares held by existing members during preceding year.		Shares held by persons no longer members.		
						Number.	Date of Transfer	Number.		Date of Transfer

COMPARATIVE TABLE.

No. of
Section in Eng.
Act, 1863, 25
& 26 Vict. c. 89.

No. of Section in
N.S.W. "Compa-
nies Act, 1874,"
37 Vict. No. 19.

1	...	...	...	...	...	1
2	Commencement of Act	...	...	...	...	251
3	...	...	...	...	...	2
4	...	...	...	...	...	3
5	...	...	...	...	...	4
6	...	...	...	...	...	5
7	...	...	...	...	...	6
8	...	...	...	...	...	7
9	...	...	...	...	...	8
10	...	...	...	...	...	9
11	...	...	...	...	...	10
12	...	...	...	...	...	11
13	...	...	...	...	...	12
14	...	...	...	...	...	13
15	...	...	...	...	...	14
16	...	...	...	...	...	15
17	...	...	...	...	...	16
18	...	...	...	...	...	17
19	...	...	...	...	...	18
20	...	...	...	...	...	19
21	...	...	...	...	...	55
22	...	...	...	...	...	20
23	...	...	...	...	...	21
24	...	...	...	...	...	22
25	...	...	...	...	...	23
26	...	...	...	...	...	24
27	...	...	...	...	...	25
28	...	...	...	...	...	26
29	...	...	...	...	...	27
30	...	...	...	...	...	18
31	...	...	...	...	...	29
32	...	...	...	...	...	30
33	...	...	...	...	...	31
34	...	...	...	...	...	32
35	...	...	...	...	...	33
36	...	...	...	...	...	34
37	...	...	...	...	...	35
38	...	...	...	...	...	36
39	...	...	...	...	...	71
40	...	...	...	...	...	72
41	...	...	...	...	...	73
42	...	...	...	...	...	74
43	...	...	...	...	...	75
44	...	...	...	...	...	76
45	...	...	...	...	...	77
46	...	...	...	...	...	78
47	...	...	...	...	...	79
48	...	...	...	...	...	80
49	...	...	...	...	...	81
50	...	...	...	...	...	82
51	...	...	...	...	...	83
52	...	...	...	...	...	84
53	...	...	...	...	...	85
54	...	...	...	...	...	86

COMPARATIVE TABLE.

No. of Section in Eng. Act, 1862, 25 & 26 Vict. c. 89.	No. of Section in N.S.W. "Compa- nies Act, 1874," 37 Vict. No. 19.
55	87
56	88
57	89
58	90
59	91
60	92
61	93
62	94
63	95
64	96
65	97
66 Application of penalties, no corresponding section	
67	98
68 Jurisdiction of Vice-Warden of Stannaries	
69	99
70	100
71	101
72	102
73 Makes provisions of "Railway Companies Arbitration Act" applicable to Companies, and see N.S.W., ss. 103-125	
74	126
75	127
76	128
77	129
78	130
79	131
80	132
81	133
82	134
83	136
84	137
85	138
86	139
87	140
88	141
89	142
90	143
91	144
92	151
93	152
94	153
95	154
96	155
97	156
98	157
99	158
100	159
101	160
102	161
103	162
104	163
105	164
106	165
107	166
108 Refers to proceedings in the Stannaries jurisdiction.	
109	167
110	168
111	169
112	170
113	171

COMPARATIVE TABLE.

163

No. of Section in Eng. Act, 1862, 24 & 26 Vict. c. 89.						No. of Section in N.S.W. "Compa- nies Act, 1874," 37 Vict. No. 19.	
114	...	...	...	...	...	...	173
115	...	...	...	...	...	...	173
116	Refers to proceedings in the Stannaries jurisdiction.						
117	...	...	...	...	...	...	174
118	...	...	...	...	...	...	175
119	...	...	...	...	...	...	176
120	...	...	...	...	...	...	177
121	Refers to Scotland						
122	Provide for enforcing English and Irish orders in Scotland						
123	and <i>vice versa</i>						
124	...	...	...	...	...	...	178
125	Judicial notice to be taken of signature of officers.						
126	Evidence on commission.						
127	Refers to evidence in Scotland.						
128	...	...	...	...	...	...	179
129	...	...	...	...	...	...	180
130	...	...	...	...	...	...	181
131	...	...	...	...	...	...	182
132	...	...	...	...	...	...	183
133	...	...	...	...	...	...	184
134	...	...	...	...	...	...	185
135	...	...	...	...	...	...	186
136	...	...	...	...	...	...	187
137	...	...	...	...	...	...	188
138	...	...	...	...	...	...	189
139	...	...	...	...	...	...	190
140	...	...	...	...	...	...	191
141	...	...	...	...	...	...	192
142	...	...	...	...	...	...	193
143	...	...	...	...	...	...	194
144	...	...	...	...	...	...	195
145	...	...	...	...	...	...	196
146	...	...	...	...	...	...	197
147	...	...	...	...	...	...	198
148	...	...	...	...	...	...	199
149	...	...	...	...	...	...	200
150	...	...	...	...	...	...	201
151	...	...	...	...	...	...	202
152	...	...	...	...	...	...	203
153	...	...	...	...	...	...	204
154	...	...	...	...	...	...	205
155	...	...	...	...	...	...	206
156	...	...	...	...	...	...	207
157	...	...	...	...	...	...	208
158	...	...	...	...	...	...	209
159	...	...	...	...	...	...	210
160	...	...	...	...	...	...	211
161	...	...	...	...	...	...	212
162	...	...	...	...	...	...	213
163	...	...	...	...	...	...	214
164	...	...	...	...	...	...	215
165	...	...	...	...	...	...	216
166	...	...	...	...	...	...	217
167	...	...	...	...	...	...	218
168	...	...	...	...	...	...	219
169	...	...	...	...	...	...	220
170	...	...	...	...	...	...	221
171	Refers to Scotland.						
172	Refers to the Stannaries.						
173	Refers to Ireland.						

COMPARATIVE TABLE.

No. of Section in Eng. Act, 1862, 25 & 28 Vict. c. 89.	No. of Section N.S.W. "Compa- nies Act, 1874," 37 Vict. No. 19.
174	222
175	
176	Part VI., Eng. Act, refers to companies registered under "Joint Stock Companies Act."
177	
178	
179		223
180	224
181	225
182	226
183	227
184	228
185	229
186	230
187	231
188	232
189	233
190	234
191	235
192	236
193	237
194	238
195	239
196	240
197	241
198	242
199	243
200	244
201	245
202	246
203	247
204	248
205	
206	
207	Part IX. of the Eng. Act, dealing with repeal of Acts and temporary provisions; with these sections compare ss. 249, 250 N.S.W. Act.
208	
209	
210	
211	
212	
Sections of the Eng. Act of 1867, 30 & 31 Vict. c. 131.	
1	Title, reference to Act of 1862, and time of commencement.
2	
3	
4	37
5	38
6	39
7	40
8	41
9	42
10	43
11	44
12	Defines the "Court."
13	45
14	46
15	47
16	48
17	49

COMPARATIVE TABLE.

165

Sections of the Eng. Act of 1867, 30 & 31 Vict. c. 131.						No. of Section in N.S.W. "Compa- nies Act, 1874," 37 Vict. No. 19.	
18	...	...	...	...	...	...	50
19	...	...	...	...	...	...	51
20	Confers power of making rules.					...	51
21	...	...	...	...	...	...	52
22	...	...	...	...	...	...	53
23	...	...	...	...	...	...	54
24	...	...	...	...	...	...	56
25	...	...	...	...	...	...	57
26	...	...	...	...	...	...	58
27	...	...	...	...	...	...	59
28	...	...	...	...	...	...	60
29	...	...	...	...	...	...	61
30	...	...	...	...	...	...	62
31	...	...	...	...	...	...	63
32	...	...	...	...	...	...	64
33	Stamp on share warrant.					...	64
34	...	...	...	...	...	...	65
35	...	...	...	...	...	...	66
36	...	...	...	...	...	...	67
37	...	...	...	...	...	...	68
38	...	...	...	...	...	...	69
39	...	...	...	...	...	...	70
40	...	...	...	...	...	...	135
41	...	...	...	...	...	...	145
42	...	...	...	...	...	...	146
43	...	...	...	...	...	...	147
44	...	...	...	...	...	...	148
45	...	...	...	...	...	...	149
46	...	...	...	...	...	...	150
47	Saving clause.					...	150

THE COMPANIES ACT, 1888.*

52 VICT. No. 14.

An Act to Amend the "Companies Act."

[23rd July, 1888.]

Preamble
37 Vict. No. 19.

WHEREAS doubts have been entertained whether the power given by the "Companies Act" to a company of reducing its capital extends to paid-up capital, and it is expedient to remove such doubts, and to increase such power, and otherwise amend the said Act: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited, for all purposes, as the "Companies Act of 1888."

Construction of
Act.
40 & 41 Vict. c.
26, s. 2.

2. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the "Companies Act," and the said Acts may be referred to as the "Companies Acts of 1874 and 1888."

Construction of
"Capital" and
powers to re-
duce capital
contained in 37
Vict. No. 19.
40 & 41 Vict. c.
26, s. 3.

3. The word "capital," as used in the "Companies Act," shall include paid-up capital; and the power to reduce capital conferred by that Act shall include a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced, either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved, notwithstanding anything contained in the "Companies Act."

Application of
provision of 37
Vict. No. 19.
40 & 41 Vict. c.
26, s. 4.

4. The provisions of the "Companies Act," as amended by this Act, shall apply to any company reducing its capital in

*This Act corresponds with the English "Companies Act, 1877," 40 & 41 Vict. c. 26, set out in Buckley, pp. 554—556, which was passed in consequence of the doubts raised by the *Ebbw Vale Co.'s Case*, 4 Ch. D. 827; but on this point, see note to s. 42 of the "Companies Act."

pursuance of this Act, and of the "Companies Act" as amended by this Act: Provided that where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital : Sect. 4.

- (i) The creditors of the company shall not, unless the Court otherwise direct, be entitled to object or required to consent to the reduction ; and
- (ii) It shall not be necessary before the hearing (a) of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced" as mentioned in the "Companies Act."

In any case that the Court thinks fit so to do it may require the company to publish in such manner, as it thinks fit, the reasons for the reduction of its capital, or such other information in regard to the reduction of its capital as the Court may think expedient with a view to give proper information to the public in relation to the reduction of its capital by a company, and if the Court thinks fit, the causes which led to such reduction. The minute required to be registered in the case of reduction of capital shall show, in addition to the other particulars required by law, the amount (if any) at the date of the registration of the minute proposed to be deemed (b) to have been paid-up on each share.

(a) Sub-sect. (2) of s. 4 of the corresponding Eng. Act, 40 & 41 Vict. cap. 26, reads, "before the presentation," and Buckley, at p. 555, takes the view that these words were used advisedly, and that the object was that "and reduced" should appear in the advertisements required by R. 5 Gen. Order, March, 1868 (R. 67 to the N.S.W. Act). In the *London and City Land Co.*, W.N. (1885) 187, a petition was presented without using the words, and without applying before the hearing to dispense with them. However, it is conceived that the use of the word "hearing" in the N.S.W. Act instead

of "presentation" does away with the necessity of inserting "and reduced" in such advertisements.

(b) By s. 47 of the "Companies Act" of 1874, the minute is to be approved by the Court, and, therefore, it is to be presumed that the Court will not allow an amount "to be deemed to have been paid-up on a share" if such amount be not in fact paid-up. A form of minute approved by Kay, J., in *re West Cumberland Iron and Steel Co.*, W.N. (1888) 54, and followed by North, J., *ib.* p. 103, is added in the forms *in/ra*.

In *West Cumberland Iron Co.*, *supra*, the petition alleged that the proposed reduction did not involve the diminution of liability in respect of unpaid capital, or the payment to any shareholder of paid-up capital; Kay, J., allowed the petition to come on for hearing without any advertisement or

Sect. 5. notice and without any certificate as to creditors. *In re New Quebrada Railway Co.*, W.N. (1888) 233, petition was allowed to come on, on one advertisement only (of presentation and hearing) being published in three papers. When the petition has not been advertised, the use of the words "and reduced" for a time will hardly ever be dispensed with: *per North, J.*, *In re Walker & Lomas*, W.N. (1888) 26. But see *In re Hudson Bros.*, *supra*, p. 27. Application to dispense with the use of the words "and reduced" till hearing must be supported by affidavit: *per Kay, J.*, *Mazim Weston Electric Co.*, W.N. (1888) 211. Return of paid-up capital, subject to recall, has been allowed: *per Kay, J.*, *In re Fore Street Warehouse Co.*, W.N. (1888) 155. And see generally notes to ss. 42—51 "Companies Act."

This Act is to be construed as one with the "Companies Act"; and the jurisdiction of the Court in confirming reductions is by that Act discretionary, s. 44; and a Judge is not bound to sanction a reduction: *In re Direct Spanish Telegraph Co.*, 34 Ch. D. 307.

Power to reduce capital by the cancellation of unissued shares.
40 & 41 Vict. c. 26, s. 5.

5. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of the passing of such resolution, have not been taken, or agreed to be taken, by any person; and the provisions of the "Companies Act" shall not apply to any reduction of capital made in pursuance of this section.

Reception of certified copies of documents as legal evidence.
37 Vict. No 19.
40 & 41 Vict. c. 26, s. 6.

6. And whereas it is expedient to make provision for the reception as legal evidence of certificates of incorporation other than the original certificates, and of certified copies of or extracts from any documents filed and registered under the "Companies Acts of 1874 and 1888": Be it enacted, that any certificate of the incorporation of any company given by the Registrar, or by any Assistant Registrar for the time being, shall be received in evidence as if it were the original certificate; and any copy of or extract from any of the documents or part of the documents kept and registered at any of the offices for the registration of Joint Stock Companies in England, Scotland, or Ireland, or in any of the Australian Colonies, if duly certified to be a true copy under the hand of the Registrar or one of the Assistant Registrars for the time being, and whom it shall not be necessary to prove to be the Registrar or Assistant Registrar, shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document.

(Repealed)

THE COMPANIES (EXTRA-COLONIAL REGISTERS)
ACT.*

48 VICT. No. 14.

An Act to authorise Companies registered under the "Companies Act" to keep Extra-Colonial Registers.

[Assented to 24th September, 1884.]

WHEREAS many companies registered under the "Companies Act" carry on business in the United Kingdom and elsewhere out of New South Wales, and dealings in their shares there are frequent, but delay and expense are occasioned by reason of the absence of legal provision for keeping local registers of their members: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales, in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited for all purposes as the "Companies Extra-Colonial Registers Act of 1884."

Short title.
46 & 47 Vict. c.
30, s. 1.

2. Any company registered in New South Wales, whose objects comprise the transaction of business in the United Kingdom or elsewhere, may, if authorised so to do by its regulations as originally framed or as altered by special resolution, cause to be kept in the United Kingdom and in any place elsewhere within the Queen's Dominions in which it transacts business a branch register of the members there resident.

Power to keep
Extra-Colonial
Registers.
46 & 47 Vict. c.
30, s. 3 (1).

3. The company shall give to the Registrar of Joint Stock Companies notice of the situation of every office where any such branch register (in this Act called an Extra-Colonial Register) is kept, and of any change therein, and of the discontinuance of any such office in the event of the same being discontinued.

Notice to Registrar of Joint
Stock Companies.
46 & 47 Vict. c.
30, s. 3 (2).

*This Act corresponds with the English "Companies (Colonial Registers) Act, 1883;" 46 & 47 Vict. c. 30; and references to the corresponding sections of that Act are given in the margin. There are, of course, differences in the two Acts, *ex necessitate*, the English Act providing for registers in the colonies, and the N.S.W. Act for registers in England, as well as in the other colonies. There are also other differences; and in considering any decisions that may hereafter be given on the English Act, the two Acts should be compared. For the English Act see Buckley, pp. 570—572.

170 THE COMPANIES (EXTRA-COLONIAL
REGISTERS) ACT.

Sect. 4.

Registers how
kept or closed,
&c.
46 & 47 Vict. c.
30, s. 3 (3).

4. An Extra-Colonial Register shall, as regards the particulars entered therein, be deemed to be part of the company's register of members, and shall be evidence of all particulars entered therein. Every such register shall be kept in the manner provided by the "Companies Act," except that the advertisement mentioned in section thirty-one of the Act shall be inserted in some newspaper circulating in the district wherein the register to be closed is kept.

Ss. 30 and 33 of
"Companies
Act" extended.
46 & 47 Vict. c.
30, s. 3 (3).

5. Sections thirty and thirty-three of the said Act shall equally apply to entries in Extra-Colonial Registers as to entries in the register of the company kept in New South Wales, and the Supreme Court and its Judges shall have the same jurisdiction in respect of entries in such Extra-Colonial Registers as by those sections is provided with respect to entries in the New South Wales Register.

Duplicates of
registers, &c.
46 & 47 Vict. c.
30, s. 3 (4).

6. The company shall cause to be transmitted to its registered office a copy of every entry in its Extra-Colonial Registers as soon as may be after such entry is made, and shall keep at such office entered up from time to time duplicates of such registers. The provisions of section thirty of the "Companies Act" shall apply to every such duplicate, and such duplicate shall for all the purposes of the Act be deemed to be part of the register of members of the company.

Extra-Colonial
shares to be
distinct.
46 & 47 Vict. c.
30, s. 3 (5).

7. Subject to the provisions of this Act with respect to duplicate registers, the shares registered in an Extra-Colonial Register shall be distinguished from the shares registered in the principal register, and no transaction with respect to a share registered in an Extra-Colonial Register shall, during the continuance of the registration of such share therein, be registered in any other register.

Discontinuance
of any register.
46 & 47 Vict. c.
30, s. 3 (6).

8. The company may discontinue any Extra-Colonial Register, and thereupon all entries in that register shall be transferred to some other register kept by the company in the same place or district, or to the register of members kept at the registered office of the company.

Companies may
make regula-
tions.
25 & 26 Vict. c.
30, s. 3 (8).

9. Subject to the provisions of this Act, any registered company may by special resolution make such provisions as it shall think fit respecting the keeping of Extra-Colonial Registers.

RULES OF COURT.

Made by their Honours the Chief Justice and the Judges of the
Supreme Court in pursuance of the powers given by the
"Companies Act."

[These Rules were published in the Government Gazette on
28th March, 1889.]

In the Supreme Court of New South Wales.

In pursuance of the powers given by the "Companies Act" (a) Gen. Order,
Nov., 1862. and of all other powers and authorities enabling us in that behalf,
we do order and direct in manner following.

(a) s. 221, *supra*, p. 109.

These Rules are composed of the Eng. R.R. under Gen. Order, Nov., 1862, and
Gen. Order, March, 1868, the latter dealing with the reduction of capital.

Petition to wind-up Company (a).

1. Every petition for the winding-up of any company by the Court, or subject to the supervision of the Court, and all notices, affidavits, and other proceedings under such petition shall be intituled in the matter of the "Companies Act," and of the company in question.

Title of petition.
Gen. Order,
Nov. 1862, E. 1,
and Gen. Order,
Mar. 1868, E. 1.

Buckley, p. 609.

(a) *Supra*, s. 134, p. 66, s. 198, p. 95.

For form of petition see form 67 *infra*, a creditors' petition.

2. Every such petition shall be advertised seven clear days before the hearing, as follows:—

Advertisement
of petition,
Gen. Order,
Nov. 1862, E. 2.

- (1) In the case of a company whose registered office (a), or if there shall be no such office, then whose principal, or last known principal place of business is or was situate within 15 miles from the General Post Office, once in the Government Gazette, and once at least in two Sydney daily morning newspapers.

Rule 3.

- (2) In the case of any other company, once in the Government Gazette, and once at least in two local newspapers circulating in the district where such registered office, or principal, or last known principal place of business, as the case may be, of such company is or was situate.

The advertisement (b) shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and Sydney agent (if any).

Buckley, pp. 610, 611.

(a) s. 71, *supra*, p. 41.

(b) Form 1, in Sch., *infra*.

This rule may, under special circumstances, be relaxed by virtue of R. 51, *infra*.

In England it has been held that the seven days may be counted in vacation : *London India Rubber Co.*, 14 L.T. 816. Where the petitioner had died on the 8th June, and an order for winding-up was made on the 9th June, an order for revivor was made in November *nunc pro tunc*, and a fresh order for winding-up the company was made: *Commercial Bank of London, In re*, W.N. (1888) 214, 234.

Where a winding-up petition had been presented and advertised, and a winding-up order made thereon, under the name of the "*Newcastle Machinists Co. Ltd.*," and the proper registered title was the "*Newcastle-upon-Tyne Machinists Co. Ltd.*," Kay, J., allowed the petitioner to amend the petition and order by correcting the title, and confirmed the order subject to an affidavit being produced to the registrar, that there was no other company of the same or a similar name; and further advertisements were dispensed with: *Newcastle Machinists Co., In re*, W.N. (1888) 246.

Service of petition.
Gen. Order,
Nov., 1863, R. 3.

3. Every such petition shall, unless presented by the company, be served at the registered office (a), if any, of the company, and if no registered office, then at the principal, or last known principal place of business, of the company, if any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the Court may direct; and every petition for the winding-up of a company subject to the supervision of the Court (b), shall also be served upon the liquidator (if any) appointed for the purpose of winding-up the affairs of the company.

Buckley, pp. 612—614.

(a) s. 71, p. 41.

(b) s. 199, p. 95.

This rule is directory only, and service at the office of the solicitor, who

accepted service, having been appointed by the company for that purpose, was held sufficient: *Regent United Service Stores*, 8 Ch. Div. 75.

Rule 7.

Form of Affidavit of Service, Form 73, *infra*.

4. Every petition for the winding-up of any company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto, in the form or to the effect set forth in Form No. 2 in the Schedule hereto; such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by the company, by some director, secretary, or other principal officer thereof; and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

Affidavit verifying petition.
Gen. Order,
Nov., 1862, R. 5.

Buckley, pp. 614—616.

Time for filing the affidavit may be enlarged under R. 87, *infra*; Form 68, *infra*.

5. Every contributor or creditor of the company shall be entitled to be furnished, by the solicitor to the petitioner, with a copy of the petition, within twenty-four hours after requiring the same, on paying at the rate of 4d. per folio of seventy-two words for such copy.

Copies of petition to be supplied.
Gen. Order,
Nov., 1862, R. 5.

Order to wind-up Company.

6. Every order for the winding-up of a company by the Court (a) or subject to its supervision (b) shall, within twelve days after the date thereof, be advertised (c) by the petitioner once in the Government Gazette, and shall be served upon such persons (if any) and in such manner as the Court may direct.

Advertisement and service of order.
Gen. Order,
Nov., 1862, R. 6.

(a) ss. 134, 139, pp. 66, 68.

(b) s. 198, p. 95.

(c) Form 5, in Sch., *infra*. Forms 3, 4, *infra*, forms of orders for winding-up.

The order will be dated on the day on which it is settled: See chapter on winding-up.

7. A copy of every order for winding-up a company, certified to be a true copy thereof as passed and entered, shall be left by the petitioner at the chambers of the Judge, within ten days after the same shall have been passed and entered, and in default thereof any other person interested in the winding-up may leave the same, and the Judge may, if he thinks fit, give

Proceedings on order.
Gen. Order,
Nov., 1862, R. 7.

Rule 8. the carriage and the prosecution of the order to such person. Upon such copy being left a summons shall be taken out to proceed with the winding-up of the company, and be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons, a time shall, if the Judge thinks fit, be fixed for the appointment of an official liquidator (a), and for the proof of debts (b), and for the list of contributories to be brought in (c), and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment, and, when necessary, by further summons, and any such direction as aforesaid may be given, added to, or varied, at any subsequent time, as may be found necessary. And the Judge may from time to time direct such of the proceedings as he may think fit to be taken before the Master in Equity (A).

(A) Eng. R. omits this clause.

(a) R. 9.

(c) R. 28.

(b) R. 20.

The words "chambers of the Judge" occurring several times in the Rules are copied from the Eng. R.R., and are not in accordance with the N.S.W. practice: See note on chapter on winding-up.

For form of summons to proceed, see Form 74, *infra*.

Official Liquidator (a).

Appointment of
official liquidator.
Gen. Order,
Nov., 1862, R. 8.

8. The Judge may appoint a person to the office of official liquidator, without previous advertisement, or notice to any party, or fix a time and place for the appointment of an official liquidator, and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated.

(a) ss. 138, 151, 152, 192, 201, 203, *supra*.

It is now the settled practice in England that the Court ought not to make an order on the hearing of a winding-up petition for the appointment of an official liquidator, but that this should be done in Chambers: *In re Gen. Financial Bank*, 20 Ch. Div. at p. 278.

Advertisement
as to appointment.
Gen. Order,
Nov., 1862, R. 9.

9. When a time and place are fixed for the appointment of an official liquidator, such time and place shall be advertised in such manner as the Judge shall direct, so that the first or only

advertisement shall be published within fourteen days and not Rule 13.
less than seven days before the day so fixed (a).

(a) Forms 6, 7, in Sch.

10. Every official liquidator shall give security by entering into a recognisance with two or more sufficient sureties in such sum as the Master (A) may approve, unless the Judge shall otherwise direct (B); and the Judge or Master may, if he shall think fit, accept the security of any Guarantee Society established by Charter or Act of Parliament (c) in lieu of the security of such sureties as aforesaid, or of any of them (a).

Security of
official liqui-
dator.
Gen. Order,
Nov. 1892, E. 10

(A) Eng. R. reads—"judge." judge shall otherwise direct" and "or
(B) *Id.* omit the words—"unless the Master."

(c) *Id.* adds—"in England."

(a) Forms 8—11, 11 (A), in Sch. For amount, Form 81; order thereon, Form
a form of summons to settle security, see 82, *infra*.
Form 76, *infra*. Summons to reduce

11. The official liquidator shall be appointed by order (a); and unless he shall have given security, a time shall be fixed by such order within which he is to do so; and the order shall fix the times or periods at which the official liquidator is to leave his accounts of his receipts and payments at the Master's office (A); and shall direct that all moneys to be received shall be paid into a bank to be named by the Judge (B) immediately after the receipt thereof, to the account of the official liquidator of the company, and an account shall be opened there accordingly (b); and an office copy of the order shall be lodged at such bank (B).

Order appoint-
ing official
liquidator.
Gen. Order,
Nov. 1892, E. 11

(A) Eng. R. reads—"judge's chambers." (B) *Id.*—"the Bank of England."

(a) Forms 8, 9, in Sch., *infra*. (b) Form 14 in Sch., *infra*; R.R.
35—42.

12. When an official liquidator has given security pursuant to the directions in the order appointing him, the same shall be certified by the Master in Equity (A), as in the case of a receiver (a) appointed in a cause, subject to giving security.

Certificate of
security given.
Gen. Order,
Nov. 1892, E. 12.

(A) Eng. R. reads—"chief clerk."

(a) R. 234, Walker's Practice in Equity, pp. 157—8.

13. The official liquidator shall, on each occasion of passing his account (a), and also whensoever the Judge may so require, satisfy the Judge or Master (A) that his sureties are living and

Fresh security
when required.
Gen. Order,
Nov. 1892, E. 13.

Rule 14. resident in New South Wales (B), and have not been adjudged bankrupt, or become insolvent, and in default thereof he may be required to enter into fresh security within such time as shall be directed.

(A) Eng. R. omits the words—"or (B) *Id.* reads—"Great Britain." Master."

(a) R. 19.

Affidavit verifying account and as to sureties, Form 88, *infra*.

Advertisement
of appointment
made.
Gen. Order,
Nov. 1862, R. 14.

14. Every appointment of an official liquidator shall be advertised (a) in such manner as the Judge shall direct, immediately after he has been appointed, and has given security.

(a) Form 15 in Sch., *infra*.

Provisional
official liquidator.
Gen. Order,
Nov. 1862, R. 15.

15. Where it is desired to appoint provisionally an official liquidator (a), an application for that purpose may, at any time after the presentation of the petition for winding-up the company, be made by summons, without advertisement or notice to any person, unless the Judge shall otherwise direct; and such provisional official liquidator may, if the Judge shall think fit, be appointed without security.

(a) s. 138, p. 68; s. 151, p. 73; Form 9 in Sch., *infra*; R. 56.

Vacancy in
office of official
liquidator.
Gen. Order,
Nov. 1862, R. 16.

16. In case of the death, removal or resignation of an official liquidator (a), another shall be appointed in his room, in the same manner as directed in the case of a first appointment, and the proceedings for that purpose may be taken by such party interested as may be authorised by the Judge to take the same.

(a) s. 192, p. 92; s. 201, p. 96; s. 203, p. 97.

Accounts.
Gen. Order,
Nov. 1862, R. 17.

17. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete, and rectify the books of account of the company; and shall provide and keep such books of account as shall be necessary, or as the Judge or Master (A) may direct, for the purposes aforesaid and for showing the debts and credits of the company, including a ledger which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as provided by the said Act and these Rules.

(A) Eng. R. omits the words—"or Master."

18. The official liquidator shall be allowed in his accounts, or otherwise paid, such salary or remuneration as the Judge may from time to time direct (a), including any necessary employment of assistants or clerks by the official liquidator, to which regard shall be had; and such salary or remuneration may either be fixed at the time of his appointment, or at any time thereafter, as the Judge may think fit. Every allowance of such salary or remuneration, unless made at the time of his appointment, or upon passing an account, shall be made upon application for that purpose by the official liquidator, on notice to such persons (if any), and supported by such evidence as the Judge shall require; nevertheless, the Judge may from time to time allow any sum he may think fit to the official liquidator, on account of the salary or remuneration to be thereafter allowed.

Rule 20.
Remuneration.
Gen. Order.
Nov. 1892, R. 18.

(a) s. 152, and note thereto.

Affidavits in support of claim for remuneration, Forms 89, 90; summons, Form 91; order, Form 92, *infra*.

19. The accounts of the official liquidator shall be left at the Master's office (A), at the times directed by the order appointing him (a), and at such other times as may from time to time be required by the Master (B), and such accounts shall, upon notice to such parties (if any) as the Master (B) shall direct, be passed and verified in the same manner as receivers' accounts.

Passing
accounts.
Gen. Order,
Nov. 1892, R. 19

(A) Eng. R. reads—"Judge's Chambers." (B) *Id.* "Judge."

(a) Forms 8, 9, in Sch., *infra*; R. 11. sureties (R. 13) Form 88, *infra*.
Affidavit verifying accounts, and as to

Proof of Debts (a).

20. For the purpose of ascertaining the debts and claims due from the company, and of requiring the creditors to come in and prove their debts or claims, an advertisement (b) shall be issued at such time as the Judge or Master (A) shall direct; and such advertisement shall fix a time for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any),

Advertisement
for creditors.
Gen. Order.
Nov. 1892, R. 20.

Rule 21. to the official liquidator, and appoint a day for adjudicating thereon (c).

(A) Eng. R. omits the words—"or Master."

(a) s. 20, p. 100.

(b) Form 16 in Sch., *infra*.

(c) s. 166, p. 81. Claim may be in Form 98, *infra*.

Attendance of
creditors.
Gen. Order,
Nov. 1862, R. 21.

21. The creditors need not attend upon the adjudication, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator; but upon such notice being given, they are to come in and prove their debts or claims within a time to be therein specified.

List of debts.
Gen. Order,
Nov. 1862, R. 22.

22. The official liquidator shall investigate the debts and claims sent in to him, and ascertain, as far as he is able, which of such debts and claims are justly due from the company; and he shall make out and leave at the Master's office (A) a list of all the debts and claims sent in to him, distinguishing which of the debts and claims, or parts of debts and claims so claimed, are, in his opinion, justly due and proper to be allowed without further evidence, and which of them, in his opinion, ought to be proved by the creditors; and he shall make and file, prior to the time appointed for adjudication, an affidavit (a), setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief.

(A) Eng. R. reads—"chambers of the Judge."

(a) Forms 17, 18, in Sch., *infra*.

Allowance of
debts.
Gen. Order,
Nov. 1862, R. 23.

23. At the time appointed for adjudicating upon the debts and claims, or at any adjournment thereof, the Judge or Master (A) may either allow the debts and claims upon the affidavit of the official liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed; and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed, of such allowance (a).

(A) Eng. R. omits the words—"or Master."

(a) Form 19 in Sch., *infra*.

24. The official liquidator shall give notice (a) to the creditors whose debts or claims have not been allowed upon his affidavit, that they are required to come in and prove (b) the same by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement, or by adjournment (as the case may be) for adjudicating upon such debts and claims.

Rule 28.

Proof of debts.
Gen. Order,
Nov. 1862, R. 24.

(a) Form 20.

(b) Form 21 in Sch., *infra*.

25. The value of such debts and claims as are made admissible to proof by the 209th (A) section of the said Act, shall, so far as is possible, be estimated according to the value thereof at the date of the order to wind-up the company.

Date of valuation of debts.
Gen. Order,
Nov. 1862, R. 25.

(A) 158th sec. of the Eng. Act, *q.v.*, and Buckley, pp. 335, 336.

Eng. B. 26 provides for the computation of interest on debts; it is omitted from the N.S.W. R.R., presumably as being *ultra vires* and unauthorised by the Act.

26. Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator, shall be allowed their costs of proof, in the same manner as in the case of debts proved in a cause (a).

Costs of proof.
Gen. Order,
Nov. 1862, R. 27.

(a) R. 214, Walker's Practice in Equity, p. 150.

27. The result of the adjudication upon debts and claims shall be stated in a certificate (a) to be made by the Master (A), and certificates as to any of such debts and claims may be made from time to time. All such certificates shall state whether the debts or claims are allowed or disallowed, and whether allowed as against any particular assets, or in any other qualified or special manner.

Master's certificate of debts.
Gen. Order,
Nov. 1862, R. 28.

(A) Eng. R. reads—"chief clerk."

(a) Form 22 in Sch.; Form 23, notice *ib.*, *infra*.
to creditor to attend to receive debt,

List of Contributories (a).

28. The official liquidator shall, with all convenient speed after his appointment, or at such time as the Judge or Master (A) shall direct, make out and leave at the Master's office (A) a list of the contributories of the company (b); and such list shall be

List of contributories.
Gen. Order,
Nov. 1862, R. 29.

Rule 29. verified by the affidavit (c) of the official liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories. And such list may from time to time, by leave of the Judge, be varied or added to by the official liquidator (d).

(A) Eng. R. omits the words—"or office," "chambers of the Judge." Master," and reads for "Master's

(a) ss. 86, 157, 158.

(b) Form 25 in Sch., *infra*.

(c) Form 24 in Sch., *infra*.

(d) Forms 29, 30, 32, in Sch., *infra*.

Notice of appointment to settle.
Gen. Order,
Nov. 1862, R. 30.

29. Upon the list of contributories being left at the Master's office (A), the official liquidator shall obtain an appointment for the Master (B) to settle the same, and shall give notice (a) in writing of such appointment to every person included in such list, and stating in what character, and for what number of shares, or interest, such person is included in the list; and, in case any variation or addition to such list shall at any time be made by the official liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition.

(A) Eng. R. reads—"chambers of the Judge." (B) *Id.* "Judge."

(a) Form 26 in Sch., *infra*; and affidavit of service, Forms 27, 28, in Sch., *infra*

Master's certificate.
Gen. Order,
Nov. 1862, R. 31.

30. The result of the settlement of the list of contributories shall be stated in a certificate (a) by the Master (A), and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time, or as to any particular person, or stating any variation of the list.

(A) Eng. R. reads—"chief clerk."

(a) Form 31 in Sch., *infra*.

Sales of Property (a).

Sales of property.
Gen. Order,
Nov. 1862, R. 32.

31. Any real or personal property belonging to the company may be sold with the approbation of the Judge, in the same manner as in the case of a sale under a decree or order of the Court in a suit (b), or, if the Judge shall so direct, by the official

liquidator ; and upon any such sale by the official liquidator, the conditions or contracts of sale shall be settled and approved of by the Judge, unless he shall otherwise direct ; and the Judge may, if he thinks fit, direct such conditions and contracts, and the abstract of the title to the property, to be submitted to the Master (A), and may, on any sale by public auction, fix a reserved bidding ; and, unless on account of the small amount of the purchase moneys or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper that the purchase moneys shall be paid to him, all conditions and contracts of sale shall provide that the purchase moneys shall be paid by the respective purchasers into a bank to be named by the Judge (B) to the account of the official liquidator of the company (C).

Rule 33.

(A) Eng. R. reads—" one of the conveying counsel of the Court." (B) *Id.* " the Bank of England."

(a) s. 154, p. 75. (c) s. 162, p. 80 ; Form 14 in Sch.,
(b) R.R. 231—233, Walker's Practice *infra.*
in Equity, p. 156.

Order for sale, Form 97, *infra.*

Calls (a).

32. Every application to the Judge to make any call on the contributories or any of them, for any purpose authorised by the said Act, shall be made by summons (b), stating the proposed amount of such call ; and such summons shall be served four clear days at the least before the day appointed for making the call, on every contributory proposed to be included in such call ; or if the Judge shall so direct, notice of such intended call may be given by advertisement (c).

Summons for call.
Gen. Order,
Nov. 1892, R. 33.

(a) s. 161, p. 80 ; affidavit of official liquidator in support, Form 33 in Sch., *infra.* (b) Form 34 in Sch., *infra.*
(c) Form 35, *ib.*

R. 60, *infra* (q.v., and note in Buckley, p. 634), provides for service on a contributory out of the jurisdiction.

33. When any order (a) for a call has been made, a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice (b) from the official liquidator specifying the amount or balance due from such con-

Service of Order.
Gen. Order,
Nov. 1892, R. 34.

Rule 34. tributary (having regard to the provisions of the said Act) in respect of such call; but such order need not be advertised unless, for any special reason, the Judge shall so direct.

Buckley, p. 625.

(a) Form 36 in Sch., *infra*.

(b) Form 37, *ib.*

Proceedings
under Order.
Gen. Order,
Nov. 1862, R. 35.

34. At the time of making an order for a call, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary; and at the time appointed by any such adjournment, or upon a summons to enforce payment of the call, duly served, and upon proof of the service of the order and notice of the amount due, and non-payment (a), an order (b) may be made for such of the contributories who have made default, or of such of them against whom it shall be thought proper to make such order, to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively.

(a) Form 38 in Sch., *infra*.

(b) Form 39, *ib.*; and affidavit of ser-

vice, Form 42 in Sch., *infra*. Summons to enforce payment, Form 100, *infra*.

Under the "Bankruptcy Act, 1887," s. 45 (*q.v.*), calls are debts provable, and payment thereof should be enforced in bankruptcy; as to sale, *ib.*, s. 59 (3); as to disclaimer of shares, *ib.*, s. 62.

Payment in of Moneys and Deposit of Securities (a).

Default of
payment into
Bank named.
Gen. Order,
Nov. 1863, R. 36.

35. If any official liquidator shall not pay all the moneys received by him into the bank named (A) to the account of the official liquidator of the company, within seven days next after the receipt thereof, unless the Judge shall have otherwise directed, such official liquidator shall be charged in his account with 10s. for every £100, and a proportionate sum for any larger amount, retained in his hands beyond such period, for every seven days during which the same shall have been so retained, and the Judge may, for any such retention, disallow the salary or remuneration of such official liquidator.

(A) Eng. R. reads—"Bank of England."

(a) s. 163, p. 81; and see R. 11, p. 175, and Form 14 in Sch., *infra*.

36. All bills, notes, and other securities payable to the company or to the official liquidator thereof shall, as soon as they shall come to the hands of such official liquidator, be deposited by him in the bank named (A) for the purpose of being presented by the bank for acceptance and payment, or for payment only, as the case may be.

Rule 38.
Bills, &c., to be deposited in the Bank named. Gen. Order, Nov. 1882, R. 37.

(A) Eng. R. reads—" Bank of England."

37. All orders for payment of calls, balances, or other moneys due from any contributory or other person, shall direct the same to be paid into the bank named (A) to the account of the official liquidator of the company, unless, on account of the smallness of the amount, or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator. Provided that where any such order has been made directing payment of a specific sum into a bank (A), in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce (a) the payment thereof, or for any other reason, an order may, either before service of such former order or after the time thereby fixed for payment, be made, without notice, for payment of the same sum to the official liquidator.

Calls, &c., to be paid into the Bank named. Gen. Order, Nov. 1882, R. 38.

(A) Eng. R. reads—" Bank of England."

(a) ss. 162, 177, pp. 80, 85.

When the order is to be enforced by writ of *fi. fa.*, the official liquidator should follow this rule and obtain an order for payment of the sum to himself.

38. At the time of the service of any order for payment into the bank named (A) the official liquidator shall give to the party served a notice, to the purport or effect set forth in Form No. 40 (a) in the Schedule hereto, for the purpose of informing him how the payment is to be made; and before the time fixed for such payment, the official liquidator shall furnish the cashier of the bank named (A) with a certificate, to the purport or effect set forth in Form No. 41 (b) in the Schedule hereto, to be signed by such cashier, and delivered to the party paying in the money therein mentioned.

Notice as to payment into the Bk. named. Gen. Order, Nov. 1882, R. 39.

(A) Eng. R. reads—" Bank of England."

(a) *Infra.*

(b) *Infra.*

Rule 39. 39. For the purpose of enforcing any order for payment of money into the bank named (A) an affidavit of the official liquidator, to the purport or effect set forth in Form No. 43 (a) in the Schedule hereto, shall be sufficient evidence of the non-payment thereof.

Affidavit of non-payment.
Gen. Order,
Nov. 1892, R. 40.

(A) Eng. R. reads—"Bank of England."

(a) *Infra.*

40. All moneys, bills, notes, and other securities paid and delivered into the bank named (A) shall be placed to the credit of the account of the official liquidator of the company; and orders for any such payment and delivery shall direct the same accordingly.

Title of account at the Bank named.
Gen. Order,
Nov. 1892, R. 41.

(A) Eng. R. reads—"Bank of England."

Delivery out of Securities, and Payment out and Investment of Moneys (a).

Cheques and requests.
Gen. Order,
Nov. 1892, R. 42.

41. All bills, notes, and other securities delivered into the bank named (A) shall be delivered out upon a request signed by the official liquidator, and countersigned by the Master in Equity (B); and moneys placed to the account of the official liquidator shall be paid out upon cheques or orders, signed by the official liquidator and countersigned by the Master in Equity (B).

(A) Eng. R. reads—"Bank of England." (B) *Id.* "chief clerk."

(a) s. 163, p. 81; Form 14 in Sch., *infra.*

Payment into Court.
Gen. Order,
Nov. 1892, R. 43.

42. All or any part of the money for the time being standing to the credit of the account of the official liquidator at the bank named (A), and not immediately required for the purposes of the winding-up, may be (B) paid into Court to the credit of an account intituled (a) the matter of the company in liquidation.

(A) Eng. R. reads—"Bank of England." be made, and differs wholly from the remainder of this rule.

(B) *Id.* directs certain investments to

(a) *Sic.* "in" is apparently omitted.

Eng. R. 44 deals with the receipt of dividends by the Bank of England, and is therefore omitted in these Rules.

Meetings of Creditors or Contributories.

43. When the Judge shall direct a meeting of the creditors or contributories of the company to be summoned under the 144th or 200th (A) section of the said Act, the official liquidator shall give notice (a) in writing seven clear days before the day appointed for such meeting, to every creditor or contributory, of the time and place appointed for such meeting, and of the matter upon which the Judge desires to ascertain the wishes of the creditors or contributories; or, if the Judge shall so direct, such notice may be given by advertisement (a), in which case the object of the meeting need not be stated, and it shall not be necessary to insert such advertisement in the Gazette.

Rule 46.

Notice.
Gen. Order,
Nov. 1862, E. 45.

(A) Eng. R. reads—"91st or 149th."

(a) Form 44 in Sch., *infra*.

44. The votes of the creditors or contributories of the company at any meeting summoned by the direction of the Judge, may be given either personally or by proxy (a); but no creditor shall appoint a proxy who is not a creditor of the company whose debts or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the company.

Votes.
Gen. Order,
Nov. 1862, E. 46.

Buckley, p. 629.

(a) Form 45 in Sch., *infra*.

45. The direction of the Judge for any meeting of creditors or contributories under the 144th or 200th (A) section of the said Act, and the appointment of a person to act as chairman of any such meeting, shall be testified by a memorandum (a) signed by the Master (B).

Memorandum
as to calling
meeting.
Gen. Order,
Nov. 1862, E. 47.

(A) Eng. R. reads—"91st or 149th."

(B) *Id.* "chief clerk of the Judge."

(a) Form 46; Chairman's Report, Form 47 in Sch., *infra*.

Direction or Sanction of the Judge.

46. The sanction of the Judge to the drawing, accepting, making and indorsing of any bill of exchange or promissory note by any official liquidator (a) shall be testified by a memorandum (b) on such bill of exchange or promissory note, signed by the Master (A).

Bill of exchange
or promissory
note.
Gen. Order,
Nov. 1862, E. 48.

(A) Eng. R. reads—"chief clerk of the Judge."

(a) s. 154, p. 75.

(b) Form 48 in Sch., *infra*.

Rule 47. 47. Every application for the sanction of the Judge to a com-

Compromise.
Gen. Order,
Nov. 1862, R. 49.

promise with any contributory or other person indebted to the company (a) shall be supported by the affidavit of the official liquidator that he has investigated the affairs of such contributory or person, and stating his belief that the proposed compromise will be beneficial to the company, and his reasons for such belief; and the sanction of the Judge thereto shall be testified by a memorandum (b), signed by the Master (A) on the agreement of compromise (c), unless any party shall desire to appeal from the decision of the Judge, in which case an order shall be drawn up for that purpose.

(A) Eng. R. reads—"chief clerk of the Judge."

(a) s. 211, *supra*, p. 101. (b) Form 50. (c) Form 49 in Sch., *infra*.

Affidavit in support of compromise, Form 94, *infra*. Order sanctioning compromise, Form 95, *infra*.

Other cases.
Gen. Order,
Nov. 1862, R. 50.

48. The direction or sanction of the Judge for any other proceeding or act to be taken or done by the official liquidator (a), shall be obtained upon summons, and an order (b) shall be drawn up thereon, unless the Judge shall otherwise direct.

(a) ss. 154, 156, 210.

(b) Form 51 in Sch., *infra*.

Applications to the Court or Judge under ss. 188, 189, 192, 218, and 219 (A) of the Act.

Application
how made.
Gen. Order,
Nov. 1862, R. 51.

49. Every application under the 188th, 189th (a) or 192nd (b) section of the said Act shall be made by petition or motion, or if the Judge shall so direct, by summons at chambers; and every application under the 218th or 219th (c) section of the said Act shall be made by petition.

(A) Eng. R. reads—"ss. 137, 138, 141, 167, and 168."

(a) p. 91.

(b) p. 92.

(c) p. 108.

Orders.

Drawing up
orders.
Gen. Order,
Nov. 1862, R. 52.

50. All orders made in chambers under this Act (A) shall be drawn up and filed (B) in the same manner as other orders made in chambers.

(A) Eng. R. omits "under this Act," and after the words "drawn up" inserts "in chambers" and adds "unless specially directed to be drawn up by the

registrar."

(B) *Id.* reads—"shall be entered" instead of "filed."

Advertisements.

51. When an advertisement is required for any purpose except where otherwise directed by these rules, the advertisement shall be inserted once in the Government (A) Gazette, and in such other newspaper or newspapers, and for such number of times as may be directed. The Judge may, in such cases as he shall think fit, dispense (a) with any advertisement required by these rules.

Rule 53.

Insertion of advertisements. Gen. Order, Nov. 1862, E. 53.

(A) Eng. R. reads—"London."

(a) The regulations as to advertisements under R. 2 may, in the discretion of the Judge, and under special circumstances, be dispensed with by virtue of this rule: *In re City and County Bank*, 10 Ch. 470, and see *infra*, RR. 87-88; cf. RR. 242, 244, Walker's Practice in Equity, pp. 161, 162.

Admission of Documents.

52. Any party to any proceeding in Court or chambers relating to the winding-up of a company may, by notice in writing in the Form in Schedule C (A) to the Consolidated Standing Rules of 29th June, 1883 (B), or to the like effect, call on any other party thereto competent to admit the same, to admit any document, saving all just exceptions; and in case of refusal or neglect so to admit, the cost of proving such documents shall be paid by the party so refusing or neglecting, unless the Judge shall be of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice shall have been given, except in cases where the omission to give such notice has been, in the opinion of the taxing officer (c), a saving of expense.

Notice to admit. Gen. Order, Nov. 1862, E. 54.

(A) Eng. R. reads—"Form No. 6 in Schedule N." (B) *Id.* "General Orders." (C) *Id.* "Master."

For the Form referred to see Walker's Eq. Practice, p. 177

Affidavits.

53. Where an order shall have been made for the winding-up of any company, any person intending to use any affidavit in any proceeding under such order, shall file the same in the Master's (A) office, and give notice thereof to the official liquidator. The person, other than the official liquidator, filing the affidavit shall not be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and

Filing and office copies of affidavit. Gen. Order, Nov. 1862, E. 55

Rule 54. he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used, unless the Judge shall otherwise direct.

(A) Eng. R.—“Record and writ clerk’s.”

Register and File of Proceedings.

Register of
proceedings.
Gen. Order,
Nov. 1882, R. 57.

54. A register shall be kept of all proceedings in the Master’s office (A) in each matter, in the same manner as required by the 2nd (B) Rule of the Consolidated Standing Rules of 29th June, 1883, and no documents or proceedings are to be filed in the Judge’s chambers, unless the Judge shall otherwise direct.

(A) Eng. R.—“Judge’s chambers.”

(B) *Id.* “57th Rule of the 35th of the Consolidated General Orders.”

R. 2, Walker’s Practice in Equity, p. 77.

File of proceed-
ings.
Gen. Order,
Nov. 1882, R. 58.

55. All orders, exhibits, admissions, memorandums, and office copies of affidavits, examinations, depositions, and certificates, and all other documents relating to the winding-up of any company, shall be filed by the official liquidator, as far as may be, in one continuous file, and such file shall be kept by him, or otherwise, as the Judge may from time to time direct. Every contributory of the company, and every creditor thereof whose debt or claim has been allowed, shall be entitled, at all reasonable times, to inspect such file free of charge, and, at his own expense, to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding four (A) pence per folio of seventy-two words; and such file shall be produced in Court, or before the Judge, and otherwise, as occasion may require.

(A) Eng. R. reads—“three half-pence.”

Buckley, p. 632; and as to solicitor’s lien on documents, *id.*, p. 278.

Provisional Official Liquidators (a).

Provisional
official
liquidator.
Gen. Order,
Nov. 1882, R. 59.

56. All the above rules relating to official liquidators, shall, so far as the same are applicable, and subject to the directions of the Judge in each case, apply to provisional official liquidators.

(a) ss. 138, 151; Form 9 in Sch., *infra*.

Attendance and Appearance of Parties.

57. Every person, for the time being, on the list of the contributories of the company (a), left at the Master's office (A) by the official liquidator, and every person having a debt or claim against the company, allowed by the Judge or Master (B), shall be at liberty, at his own expense, to attend the proceedings before the Judge or Master (B), and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the Judge or Master (B) shall be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the company, he may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

Rule 59.

Attendance of parties.
Gen. Order,
Nov. 1902, E. 60.

(A) Eng. R. reads—"chambers of the Judge." (B) *Id.* omits "or Master."

(a) R. 28. Summons for leave to attend, Form 79; order, Form 80, *infra*.

58. The Judge or Master (A) may from time to time appoint any one or more of the contributories, or creditors, as he thinks fit, to represent before him, at the expense of the company, all or any class of the contributories or creditors, upon any question as to a compromise with any of the contributories or creditors, or in and about any other proceedings before him relating to the winding-up of the company, and may remove the person or persons so appointed. In case more than one person shall be so appointed, they shall unite in employing the same solicitor to represent them.

Appointment of representative party.
Gen. Order,
Nov. 1902, E. 61

(A) Eng. R. omits the words—"or Master."

59. No contributory or creditor shall be entitled to attend any proceeding at the chambers of the Judge or in the Master's office (A) unless and until he has entered in a book (a) to be kept there for that purpose his name and address, and the name and address of his solicitor (if any), and upon any change of his

Particulars to be given before attendance.
Gen. Order,
Nov. 1902, E. 62.

Rule 60. address or (B) his solicitor, his new address, and the name and address of his new solicitor.

(A) Eng. R. omits the words—"or" (B) *Id.* inserts—"of."
in the Master's office."

(a) Form 52 in Sch., *infra*.

Services of Summonses, Notices, &c. (a).

Service how
effected.
Gen. Order,
Nov. 1862, R. 63.

60. Services upon contributories and creditors shall be effected (except when personal service is required) by sending the notice, or a copy of the summons or order or other proceeding, through the post in a prepaid letter, addressed to the solicitor of the party to be served (if any) or otherwise to the party himself at the address entered or last entered pursuant to the preceding rule; or if no such entry has been made, then, if a contributory, to his last known address or place of abode; and if a creditor, to the address given by him, pursuant to the foregoing Rule 59 (A), and such notice, or copy, summons, order, or other proceeding, shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post-office, and notwithstanding the same may be returned by the post-office.

(A) Eng. R. reads—"20"; and see N.S.W. R. 20.

(a) ss. 94, 95, provide for service on the company.

Notice of an appointment to settle the list of contributories may be served out of the jurisdiction under this rule; *secus*, in the case of an originating summons or of a notice intended to be the foundation of proceedings substituted for an action: *Nathan, Newman & Co.*, 35 Ch. Div. at p. 3.

Substituted service may be obtained on motion: Form 83; order for service out of the jurisdiction: Form 84, *infra*.

Name of person
incomplete.
Gen. Order,
Nov. 1862, R. 64.

61. No service under these rules shall be deemed invalid by reason that the Christian name, or any of the Christian names of the person on whom service is sought to be made, has been omitted, or designated by initial letters, in the list of contributories, or in the summons, order, notice, or other document, wherein the name of such contributory or creditor is contained, provided the Judge is satisfied that such service is in other respects sufficient.

Termination of Winding-up.

62. Upon the termination of the proceedings (A) for the winding-up of any company, a balance-sheet shall be brought into the Master's office (B) by the official liquidator of his receipts and payments, and verified by his affidavit; and the official liquidator shall pass his final account, and the balance (if any) due thereon shall be certified. And upon payment of such balance, in such manner as the Court or Judge shall direct, the recognisance entered into by the official liquidator and his sureties may be vacated.

Rule 64.

Proceedings on termination.
Gen. Order,
Nov. 1862, R. 65

(A) Eng. R. reads—"proceedings in the chambers."
(B) *Id.* "in," omitting the words "the Master's office."

63. When the official liquidator has passed his final account, and the balance (if any) certified to be due thereon has been paid in such manner as the Judge shall direct, a certificate (a) shall be made by the Master (A) that the affairs of the company have been completely wound up; and in case the company has not been already dissolved, the official liquidator shall, immediately after such certificate has become binding, apply to the Judge for an order (b) that the company be dissolved from the date of such order.

Dissolution of company.
Gen. Order,
Nov. 1862, R. 66

(A) Eng. R. reads—"chief clerk."

(a) Form 54 in Sch., *infra*.

(b) S. 169, *ante*, p. 82; Form 55 in Sch., *infra*.

As to disposal of books, &c., of the company, on dissolution, see s. 206, p. 99. In England it is commonly the practice to take a dissolution order. See s. 169, *supra*, p. 82, and Buckley, p. 280.

In equity the Master's certificate becomes binding on the parties thereto after it has been adopted and signed by the Judge, and unless discharged or varied by the Court upon application within such time as may be fixed by any general rule: s. 69, "Equity Act," RR. 225—227, Walker's Practice in Equity; under R. 88, *infra*, in cases not provided for by the "Companies Act," the general practice of the Equity Court is thereby adopted, *cf.* s. 221, *supra*.

Reduction of Capital (a).

64. Every petition for an order confirming a special resolution for reducing the capital of a company, and all notices, affidavits, and other proceeding (*sic*) (A) under such petition, shall be

Title of petition to reduce capital.
Gen. Order,
Mar. 1863, R. 2.

Rule 65. intituled in the matter of the "Companies Act" (B), and of the company in question.

(A) Eng. R. reads—"proceedings." (B) *Id.* adds "1867."

(a) ss. 42, 43, 44, *supra*, p. 25, and see thereon Buckley, pp. 510—517.

As to compliance with the order, see s. 47, *supra*, p. 29, and note in Buckley, p. 520.

Certificate
before petition
placed in list.
Gen. Order,
Mar. 1868, R. 2.

65. No such petition (A) shall be placed in the list of petitions (B) until after the expiration of eight clear days from the filing of such certificate as is mentioned in the 76th Rule (c).

(A) Eng. R. adds—"as mentioned in the 2nd Rule of this Order." Lord Chancellor or of the Master of the Rolls, as the case may be."

(B) *Id.* adds—"by the Secretary of the (c) *Id.* "14th Rule."

Proceedings
after petition
presented.
Gen. Order,
Mar. 1868, R. 2.

66. When any such petition as last aforesaid has been presented, application may be made, *ex parte*, by summons in chambers, to the Judge (A) for directions as to the proceedings to be taken for settling the list of creditors entitled to object to the proposed reduction, and the Judge may thereupon fix the date with reference to which the list of such creditors is to be made out, pursuant to the 45th (B) section of the "Companies Act;" and may, either at the same time or afterwards, as he shall think fit, give such directions as are mentioned in the 67th and 68th (c) Rules (b). The Order upon such summons may be in the form No. 56 (d) in the Schedule hereto, with such variations as the circumstances of the case may require.

(A) Eng. R. adds—"to whose Court the petition is attached." panies Act, 1867." (c) *Id.* "5th and 6th Rules." (B) *Id.* "13th section of the 'Com- (d) *Id.* "No. 1."

Advertisement
of petition.
Gen. Order,
Mar. 1868, R. 5.

67. Notice of the presentation of the petition shall be published at such times and in such newspapers as the Judge shall direct, so that the first insertion of such notice be made not less than one calendar month before the day of the date fixed, as mentioned in the 66th (A) Rule. Such notice may be in the Form No. 57 (B) in the Schedule hereto, with such variations as the circumstances of the case may require.

(A) Eng. R. reads—"4th Rule of this Order." (B) *Id.* "No. 2."

Affidavit as to
creditors.
Gen. Order,
Mar. 1868, R. 6.

68. The company shall, within such time as the Judge shall direct, file in the Master's office (A) an affidavit made by some officer or officers of the company competent to make the same,

verifying a list containing the names and addresses of the Rule 71.
creditors of the company at the date fixed as mentioned in the
66th (B) Rule, and the amounts due to them respectively, and leave
the said list and an office copy of such affidavit at the chambers
of the Judge.

(A) Eng. R. reads — "office of the (B) *Id.* "4th Rule of this Order."
clerks of Records and Writes."

69. The person making such affidavit shall state therein his Form of
affidavit.
Gen. Order,
Mar. 1868, R. 7.
belief that such list is correct, and that there was not at the date
so fixed as aforesaid any debt or claim, which, if that date were
the commencement of the winding-up of the company, would be
admissible in proof against the company, except the debts set
forth in such list, and shall state his means of knowledge of the
matters deposed to in such affidavit. Such affidavit may be in
the Form No. 58 (A) in the Schedule hereto, with such variations
as the circumstances of the case may require.

(A) Eng. R. — "No. 3."

70. Copies of such list containing the names and addresses of Inspection of
list of creditors.
Gen. Order,
Mar. 1868, R. 8.
the creditors, and the total amount due to them, but omitting
the amounts due to them respectively, or (as the Judge shall
think fit) complete copies of such list, shall be kept at the
registered office of the company, and at the offices of their
solicitors and Sydney (A) agents (if any), and any person desirous
of inspecting the same may, at any time during the ordinary
hours of business, inspect and take extracts from the same on
payment of the sum of one shilling.

(A) Eng. R. reads — "London."

This rule is identical with that given, Buckley, p. 663, as the 8th Rule of General
Order, March, 1868; but it appears that the rule so given is not the original rule
of that date, but as altered by Order of 2nd March, 1869.

71. The company shall, within seven days after the filing of Notice to
creditors.
Gen. Order,
Mar. 1868, R. 9.
such affidavit, or such further time as the Judge may allow, send
to each creditor whose name is entered in the said list a notice
stating the amount of the proposed reduction of capital, and the
amount of the debt for which such creditor is entered in the said
list, and the time (such time to be fixed by the Judge) within

Rule 72. which, if he claims to be a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his solicitor (if any) to the solicitor of the company; and such notice shall be sent through the post in a prepaid letter addressed to each creditor at his last known address or place of abode, and may be in the form or to the effect of the Form No. 59 (A) set forth in the Schedule hereto, with such variations as the circumstances of the case may require.

(A) Eng. R.—“No. 4.”

Advertisement
as to list of
creditors.
Gen. Order,
Mar. 1898, R. 10.

72. Notice of the list of creditors shall, after the filing of the affidavit mentioned in the 68th (A) of these Rules, be published at such times, and in such newspapers, as the Judge shall direct. Every such notice shall state the amount of the proposed reduction of capital, and the places where the aforesaid list of creditors may be inspected, and the time within which creditors of the company who are not entered on the said list, and are desirous of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the solicitor of the company; and such notice may be in the Form No. 60 (B), set forth in the said Schedule hereto, with such variations as the circumstances of the case may require.

(A) Eng. R. reads—“6th.”

(B) *Id.* “No. 5.”

See s. 47, and note thereto.

Affidavit as to
result of Rules
71, 72.
Gen. Order,
Mar. 1898, R. 11.

73. The company shall, within such time as the Judge shall direct, file in the Master's office (A) an affidavit made by the person to whom the particulars of debts or claims are, by such notices as are mentioned in the 71st and 72nd (B) Rules, required to be sent in, stating the result of such notices respectively, and verifying a list containing the names and addresses of the persons (if any), who shall have sent in the particulars of their debts or claims in pursuance of such notices respectively, and the amounts of such debts or claims, and some competent officer or officers of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the

company, and which (if any) of such debts and claims are wholly, **Rule 76.**
or as to any and what part thereof, disputed by the company.
Such affidavit may be in the Form No. 61 (c) in the Schedule
hereto, with such variations as the circumstances of the case may
require; and such list, and an office copy of such affidavit, shall,
within such time as the Judge shall direct, be left at the chambers
of the Judge.

(A) Eng. R. reads—"office of the (B) *Id.* "9th and 10."
clerks of Records and Writs." (C) *Id.* "No. 6."

74. If any debt or claim, the particulars of which are so sent Proceedings where claim not admitted. Gen. Order, Mar. 1888, R. 12.
in, shall not be admitted by the company at its full amount, then,
and in every such case, unless the company are willing to set
apart and appropriate in such manner as the Judge shall direct
the full amount of such debt or claim, the company shall, if the
Judge think fit so to direct, send to the creditor a notice that he
is required to come in and prove such debt or claim, or such part
thereof as is not admitted by the company, by a day to be therein
named, being not less than four clear days after such notice,
and being the time appointed by the Judge for adjudicating upon
such debts and claims, and such notice shall be sent in the
manner mentioned in the 71st (A) Rule, and may be in the Form
No. 62 (B) in the Schedule hereto, with such variations as the
circumstances of the case may require.

(A) Eng. R.—"9th Rule of this Order." (B) *Id.* "No. 7."

75. Such creditors as come in to prove their debts or claims, Costs of proof. Gen. Order, Mar. 1888, R. 13.
in pursuance of any such notice as is mentioned in the 74th (A)
of these Rules, shall be allowed their costs of proof against the
company, and be answerable for costs, in the same manner as in
the case of persons coming in to prove debts under a decree in
a cause.

(A) Eng. R. reads—"12th."

See R. 26, p. 179, and note thereon.

76. The result of the settlement of the list of creditors shall Master's certificate as to creditors. Gen. Order, Mar. 1888, R. 14.
be stated in a certificate of the Master (A), and such certificate (A)
shall state what debts or claims (if any) have been disallowed,
and shall distinguish the debts or claims the full amount of which
the company are willing to set apart and appropriate, and the

Rule 77. debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by section 46 (B) of the said Act, and the debts or claims (if any) the full amount of which is not admitted by the company, nor such as the company are willing to set apart and appropriate, and the amount of which has not been fixed by inquiry and adjudication as aforesaid; and shall show which of the creditors have consented in writing to the proposed reduction, and the total amount of the debts due to them, and the total amount of the debts or claims the payment of which has been secured in manner provided by the said 46th (B) section, and the persons to or by whom the same are due or claimed; but it shall not be necessary to show in such certificate the several amounts of the debts or claims of any persons who have consented in writing to the proposed reduction, or the payment of whose debts or claims have been secured as aforesaid.

(A) Eng. R. reads—"by the chief clerk." (B) *Ib.* "14th section."

(a) Form of certificate, *infra*, Form 105.

The Eng. R. given in Buckley, p. 665, is printed as altered by Order of the 2nd of March, 1869.

Placing petition
in list.
Gen. Order,
Mar. 1868, R. 15.

77. After the expiration of eight clear days from the filing of such last-mentioned certificate, the petition may be placed in the list of petitions (A).

(A) Eng. R. adds—"upon a note the Rolls, as the case may be, stating from the chief clerk to the secretary of that the certificate has been filed and the Lord Chancellor or of the Master of become binding."

Advertisement
of hearing.
Gen. Order,
Mar. 1868, R. 16.

78. Before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers as the Judge shall direct. Such notices may be in the Form No. 63 (A) in the Schedule hereto, with such variations as the circumstances of the case may require.

(A) Eng. R.—"No. 8."

See s. 47, p. 29, and note thereto.

Who may
appear.
Gen. Order,
Mar. 1868, R. 17.

79. Any creditor settled on the said list whose debt or claim has not, before the hearing of the petition, been discharged or determined, or has (A) been secured in manner provided by the 46th (B) section of the said Act, and who has not, before the

hearing, signed a consent to the proposed reduction of capital, **Rule 82.** may if he think fit, upon giving two clear days' notice to the solicitor of the company of his intentions (*sic*) so to do, appear at the hearing of the petition and oppose the application.

(A) Eng. R. omits "has."

(B) Eng. R. reads—"14th section."

80. Where a creditor who appears at the hearing under the last preceding Rule is a creditor the full amount of whose debt or claim is not admitted by the company, and the validity of such debt or claim has not been inquired into and adjudicated upon under section 46 (A) of the said Act, the costs of and occasioned by his appearance shall be dealt with as to the Court shall seem just, but in all other cases a creditor appearing under the last preceding Rule shall be entitled to the costs of such appearance, unless the Court shall be of opinion that in the circumstances of the particular case his costs ought not to be allowed.

Costs of appearance.
Gen. Order,
Mar. 1868, R. 18.

(A) Eng. R.—"section 14."

81. When the petition comes on to be heard, the Court may, if it shall so think fit, give such directions as may seem proper with reference to the securing in manner mentioned in section 46 (A) of the said Act the payment of the debts or claims of any creditors who do not consent to the proposed reduction; and the further hearing of the petition may, if the Court shall think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims.

Directions at the hearing.
Gen. Order,
Mar. 1868, R. 19.

(A) Eng. R.—"section 14."

82. Where the Court makes an Order confirming a reduction, such Order shall give directions in what manner, and in what newspapers, and at what times, notice of the registration of the Order and of such Minute as mentioned in the 47th (A) section of the "Companies Act" is to be published; and shall fix the date until which the words "and reduced" are to be deemed part of the name of the company as mentioned in the 43rd (B) section of the same Act.

Order confirming reduction.
Gen. Order,
Mar. 1868, R. 20.

(A) Eng. R. reads—"15th section of the 'Companies Act, 1867.'"
(B) *Id.* "10th section."

For Forms of Order, advertisements, &c., see notes in Tuckley, pp. 516—521. And see the "Companies Act, 1838."

Duties of Solicitor of Official Liquidator (a).

- Rule 83.** 83. The solicitor of the official liquidator shall conduct all such proceedings as are ordinarily conducted by solicitors of the Court; and where the attendance of his solicitor is required on any proceeding in Court or chambers, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Judge or Master (A) shall direct him to attend.

Duties of
solicitor.
Gen. Order,
Nov. 1862, R. 68.

(A) Eng. R. omits the words "or Master."

(a) s. 156, p. 77.

Forms.

- Forms.** 84. The forms set forth or referred to in the Third (a) Schedule to these Orders, with such variations as the circumstances of each case may require, may be used for the respective purposes mentioned in such Schedule.

Gen. Order,
Nov. 1862, R. 69.

(a) *Sic.* Copied from the Eng. Order.

Fees.

85. The same fees shall be allowed in respect of all matters and proceedings under the "Companies Act" as are now allowed in respect of similar matters and proceedings in the Equity Court.

Taxation of Costs.

- Taxation of costs.** 86. Where an order is made in Court or chambers for payment of any costs, the order shall direct the taxation thereof by the (A) Master; except in cases where a gross sum in lieu of taxed costs (a) is fixed by the order (B).

Gen. Order,
Nov. 1862, R. 72.

(A) Eng. R. inserts—"taxing." 37th Rule of the 40th of the Consolidated
(B) *Id.* adds—"in accordance with the General Orders."

(a) *Cf.* R.R. 230, 269, "Equity Act, 1880," Walker's Practice in Equity.

Power of Judge.

- General power of Judge.** 87. The power of the Court, and of the Judge sitting in chambers, to enlarge or abridge the time for doing any act, or taking any proceeding, to adjourn, or review any proceeding, and to give any direction as to the cause (*sic*) of proceeding, is unaffected by these Rules.

Gen. Order,
Nov. 1862, R. 73.
Cf. Gen. Order
Mar. 1868, R. 23.

See R. 4, *supra*; *cf.* R.R. 242, 244, "Equity Act, 1880," Walker's Practice in Equity.

General Directions.

88. The general practice of the Court (a), including the course **Rule 90.**
of proceeding and practice at the Judges' chambers, as provided
by the (b) "Equity Act, 1880," (A) and the Consolidated Standing
Rules of 29th June, 1883, (B) shall, in cases not provided for by
the "Companies Act," (c) or these Rules, and so far as the same
are applicable, and not inconsistent with the said Act, or these
Rules, apply to all proceedings for winding-up a company and for
reduction of capital (D).

General practice to apply.
Gen. Order,
Nov. 1862, R. 74;
Of Gen. Order,
Mar. 1868, R. 24.

(A) Eng. R. reads—"Statute 15th and 16th Victoria, chapter 80."
(B) *Id.* "General Orders of the Court relative thereto."

(C) *Id.* adds—"1862."
(D) *Id.* omits the words—"and for reduction of capital."

(a) S. 221, *supra*, p. 109.

(b) Walker's Practice in Equity.

Application of Rules.

89. These Rules apply only to proceedings under the "Companies Act" (A).

Application of Rules.
Gen. Order,
Nov. 1862, R. 75.

(A) Eng. R. adds—"1862."

It is presumed they must also be taken to apply to the "Companies Act, 1883."

Commencement of Rules.

90. These Rules shall take effect and come into operation on and after the 1st day of April, 1889.

Commencement of Rules.

FREDK. M. DARLEY, C.J.
W. C. WINDEYER, J.
M. H. STEPHEN, J.
WM. OWEN, J.
GEORGE HIBBERT DEFFELL, J.
W. J. FOSTER, J.

THE SCHEDULE.

[The forms in this Schedule, down to No. 55, correspond generally with those in the 3rd Schedule to Eng. Gen. Order, Nov., 1862; and from No. 56 to the end, with those in the Schedule to Eng. Gen. Order, March, 1868.]

FORMS.

No. 1. *Advertisement of Petition.* [Rule 2 (a).]

In the Matter of the "Companies Act,"
of the Company (b).

Notice is hereby given, that a petition for the winding-up of the above-named company by the Court [or, subject to the supervision of the Court] was, on the day of 18, presented by the said company [or, by A.B.,] of , a creditor [or, contributory] of the said company [as the case may be]. And that the said petition is directed to be heard before the Primary Judge in Equity on the day of 18; and any creditor or contributory of the said company desirous to oppose the making of an order for the winding-up of the said company under the above Act, should appear at the time of hearing, by himself or his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same, by the undersigned, on payment of the regulated charge for the same.

C. and D., of &c. [agents for E. and F., of &c.]
Solicitors for the Petitioner.

(a) *Supra*, p. 171; and see note thereto.

(b) R. 1, as to title.

No. 2. *Affidavit verifying Petition.* [Rule 4 (a).]

In the Supreme Court }
of New South Wales. }
In Equity. }

In the matter, &c.

I, A.B., of &c., make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter A, as relate to my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons, I believe to be true.

Sworn, &c.

(a) *Supra*, p. 173.

No. 3. *Order for Winding-up by the Court* (a).

In the Supreme Court } day, the day of
of New South Wales. } 18
In Equity. }

In the Matter, &c.,

Upon the petition of the above-named company [or A.B., of &c., a creditor or, contributory] of the above-named company, on the day of 18, preferred unto the Primary Judge in Equity, and upon hearing counsel for the petitioner and for and upon reading the said petition, an affidavit of (the said petitioner) filed, &c., verifying the said petition, an affidavit of L.M., filed the day of 18, the Government Gazette of the day of , the newspaper of the day of [enter any other papers] each containing an advertisement of the said petition [enter any other evidence], his Honour doth order that the said company be wound-up by this Court, under the provisions of the "Companies Act."

(a) ss. 133, 134, *supra*, p. 66.

RULES OF COURT—THE SCHEDULE. 201

No. 4. Order for Winding-up, subject to Supervision (a).

Form 7.

In the Supreme Court } day, the day of
of New South Wales. } 18
In Equity. } In the Matter, &c.

Upon the petition, &c., his Honour doth order that the voluntary winding-up of the said company be continued, but subject to the supervision of this Court; and any of the proceedings under the said voluntary winding-up may be adopted as the Judge shall think fit. And the creditors, contributories, and liquidators of the said company, and all other persons interested, are to be at liberty to apply to the Judge at Chambers as there may be occasion.

(a) ss. 198, 199, *supra*, p. 95.

No. 5. Advertisement of Order to Wind-up. [Rule 6 (a).]

In the Matter, &c.
By an order made by the Primary Judge in Equity in the above matter, dated the day of , 18 , on the petition of the above-named company [or, A.B., of] It was ordered that, &c. [as in Order].
C. & D., of &c.
Solicitors for the said
Petitioner.

(a) *Supra*, p. 173.

No. 6. Advertisement of Time and Place fixed for the Appointment of Official Liquidator. [Rule 9 (a).]

In the Matter, &c.
Notice is hereby given, that the Primary Judge in Equity has fixed the day of 18 , at o'clock in the noon, at his Chambers [or the Master's office] in Chancery Square, as the time and place for the appointment of an official liquidator of the above-named company.

G. H.,
Master in Equity.

(a) *Supra*, p. 174.

No. 7. Proposal for Appointment of Official Liquidator (and Sureties) where form No. 6 has been issued.

In the Matter, &c.
We, the undersigned contributories of the above-named company for the number of shares placed opposite our respective names, hereby propose Mr. W. T., of &c., public accountant, to be the official liquidator of the said company [and H.N., of &c., and J.P., of &c., to be his sureties].

Name.	Address.	Number of shares held.

Form 8.**No. 8. Order appointing an Official Liquidator.** [Rules 10, 11 (a)].

Primary Judge in } the day of
 Equity, } 18
 at Chambers. } In the Matter, &c.
 Upon the application, &c., and upon reading, &c., I do hereby appoint R.P.H., of &c., official liquidator of the above-named company. [If security has not been given, add, And I do order that the said R.P.H. do, on or before the day of next, give security to be approved of by the Judge [or Master].] And I do order that the said R.P.H. do, on the day of , and day of 18 , and the same day, in each succeeding year, leave his accounts at the Master's office. And I do order that all moneys to be received by the said R.P.H. be paid by him into Bank to the credit of the account of the official liquidator of the said company, within seven days after the receipt thereof. [In case two or more official liquidators are appointed, add, And I do declare that the following acts, required or authorised by the above statute to be done by the official liquidator, may be done by either [or, any one, or, two] of the official liquidators hereby appointed, that is to say [describe the acts]; and that all other acts so required or authorised to be done be done by both [or, all] the official liquidators hereby appointed].

(a) *Supra*, p. 175.**No. 9. Order appointing a Provisional Liquidator.** [Rules 10, 11 (a), 15 (b), 56 (c).]

Primary Judge in } the day of
 Equity, } 18
 at Chambers. } In the Matter, &c.
 Upon the application, &c., and upon reading, &c., I do hereby appoint R.P.H., of &c., provisionally, official liquidator of the above-named company. [If security dispensed with, add, without security; or, if security is to be given, add directions as to security, accounts, and payment into the bank, as in Form No. 8.] And I do hereby limit and restrict the powers of the said R.P.H., as such provisional official liquidator, to the following acts, that is to say [describe the acts which the provisional official liquidator is to be authorised to do].

(a) *Supra*, p. 175.(b) *Ib.*, p. 176.(c) *Ib.*, p. 188.**No. 10. Recognizance of the Official Liquidator and Sureties.** [Rule 10 (a).]

18 In the matter, &c.
 I have approved of and allowed this recogni-
 zance. G.H. Master in Equity.
 R.P.H., of &c., W.B., of &c., and T.P., of &c., before our Sovereign Lady the Queen in the Supreme Court of New South Wales personally appearing, do acknowledge themselves, and every of them doth acknowledge himself, to owe to the Master in Equity of the said Court, the respective sums of lawful money of Great Britain set opposite to their respective names in the schedule hereto, to be paid to the said Master in Equity or his successors in office; and in default of payment of the said sums the said R.P.H., W.B., and T.P., are willing and do agree, and every of them is willing and doth agree for himself, his heirs, executors, and administrators, by these presents, that the said sums shall be levied, recovered, and received of and from them and every of them, and of and from all and singular the messuages, lands, tenements, and hereditaments, goods, and chattels, of them, and every of them, wheresoever the same shall be found. Witness, our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, at Sydney, the day of , 18 .

WHEREAS, in the matter of, &c. [take title from order to wind-up] the Primary

Judge in Equity _____ has by an order dated the _____ day of _____ 18____, appointed had (b) the said R.P.H. official liquidator of the said company, and thereby directed him to give security, to be approved of by the said Master [or, in case the security precedes the order appointing, has approved of the said R.P.H. as a proper person to be appointed official liquidator of the said company upon his giving security]. And whereas the said Master has approved of the said W.B. and T.P. to be sureties for the said R.P.H. in the amounts set opposite to their respective names in the schedule hereto, and has also approved of the above-written recognizance, with the under-written condition, as a proper security to be entered into by the said R.P.H., W.B., and T.P., pursuant to the said order and [or, pursuant to] the general order of the said Court in that behalf; and in testimony of such approbation the Master hath signed an allowance in the margin hereof. Now the condition of the above-written recognizance is such, that if the said R.P.H., his executors, or administrators, or any of them, do and shall duly account for what the said R.P.H. shall receive, or become liable to pay, as official liquidator of the said company at such periods and in such manner as the said Judge [or Master] shall appoint, and pay the same as the said Judge [or Master] hath [by the said order] directed, or shall hereafter direct, then the above recognizance to be void, otherwise to remain in full force and virtue.

THE SCHEDULE ABOVE REFERRED TO.

R.P.H.	.	.	_____	.	.	Thousand pounds.
W.B.	.	.	_____	.	.	Thousand pounds.
T.P.	.	.	_____	.	.	Thousand pounds.

Taken and acknowledged by the abovenamed R.P.H., &c., &c.

(a) *Supra*, p. 175.

(b) *Sic*.

No. 11. *Affidavit of Sureties*. [Rule 10 (a).]

In the Supreme Court of }
New South Wales. }
In Equity. }

In the Matter, &c.

We, W.B., of &c., and T.P., of &c., severally make oath and say as follows.—

1. I, the said W.B., for myself say that I am worth the sum of £ _____ of lawful money of Great Britain, over and above what is sufficient for the payment of all my just debts and liabilities.

2. And I, the said T.P., for myself say that I am worth the sum of £ _____ of &c. [as above].

Sworn, &c.

(a) *Supra*, p. 175.

No. 11A. *Bond by Guarantee Company*. [R. 10 (a).]

[Know all men by these presents, that _____ are jointly and severally held and firmly bound unto _____ the Master in Equity of the Supreme Court of New South Wales in the sum of £ _____ of lawful money of the United Kingdom of Great Britain and Ireland to be paid unto the said _____ or his successor or successors in office or the executors or administrators of them or one of them. For which payment well and truly to be made I the said _____ for myself, my heirs, executors, and administrators and every of them, and we, the said _____, for ourselves and our successors, do bind and oblige ourselves for the whole firmly by these presents.

Sealed with the seal of the said _____ and also with the seal of the said _____

Dated the _____ day of _____ A.D. 18____

Whereas _____ has by an order dated the _____ day of _____ appointed the said _____ official liquidator of the said company, and has thereby directed

Form 11a. him to give security to be approved of by the . And whereas the
 has approved of the Company, Limited, above-named, to be
 sureties for the said for the sum of £ and has also approved of
 the above bond with the underwritten condition together with the recognizance
 of the said in the penal sum of £ bearing even date herewith
 as a proper security to be entered into by the said and the said
 company, pursuant to the said order and the general order of the Court in that
 behalf, and in testimony of such approbation the hath signed an allow-
 ance in the margin hereof, and of the said recognizances respectively. Now,
 the condition of the above-written bond or obligation is such, that if the above
 bounden , his executors or administrators, or some or one of them, do,
 and shall duly account for what he the said shall receive or shall
 become liable to pay as such official liquidator of the said company as aforesaid,
 at such period and in such manner as the shall appoint, and do and
 shall pay the same as such hath directed or shall hereafter direct, then
 the above-written bond or obligation shall be void or else shall, subject to the
 provisions hereinafter contained, be and remain in full force and virtue.
 Provided always that if default shall be made by the said in paying
 to the said company on or before the day of in any year of
 guarantee the annual premium or sum of £ , then the said company
 shall at any time after such default in payment be at liberty to apply by
 summons to the said Judge at Chambers to be relieved from all further liability
 as such sureties as aforesaid from the final hearing of such summons, such
 summons having been served upon such persons as the Judge shall direct, and
 being finally heard all further liability of the said company as such sureties
 as aforesaid shall from and after such final hearing of such summons, or from
 and after such other time as the Judge shall direct, cease and determine, save
 and except in respect of any loss or damage occasioned by any act or default of
 the said in relation to his duties as such official liquidator as aforesaid
 previously to such cesser and determination of liability. Provided always and
 it is hereby agreed and declared that this bond is entered into by the said
 company on the condition that the capital stock and funds according to the
 articles of association of the said company (or the deed of settlement of the
 said company) shall alone be liable to answer and make good all claims in
 respect of this bond, and that no director or proprietor of the said company
 shall in any manner be personally liable or subject to any claims or demands
 by reason of such bond beyond the amount unpaid of his or her share or shares
 of such capital, stock, or funds (*the preceding proviso is not necessary in the
 case of a limited company*). Provided always that a certificate or certificates
 under the hand of the of the amount which the said as such
 official liquidator as aforesaid is liable to pay, and has not paid, shall be sufficient
 and conclusive evidence against the said , his heirs, executors, and
 administrators, and against the said company, and also as between the said
 company and the said and , of the truth of the contents of
 the said certificate or certificates, and that this bond has become forfeited
 thereby to the amount of the sum stated in such certificate or certificates, and
 shall form a valid and binding charge and claim, not only against the said
 , his heirs, executors, and administrators, but also against the said
 company and the funds and property thereof, without its being necessary for
 the said and or either of them, their or either of their
 executors or administrators, first to take legal or other proceedings against the
 said , his heirs, executors, or administrators, for the recovery thereof,
 and without any further or other proof being given by or on the part of the said
 and , or either of them, or their or either of their executors
 or administrators in any action, suit, or proceeding to enforce this bond against
 the said company or against the said , his heirs, executors, or adminis-
 trators, or by or on the part of the said company in any action or proceeding
 against the said , his heirs, executors, or administrators, of the amount
 of such damage or loss, or that the same has been sustained, incurred, or
 occasioned by and through the act or default of the said while in
 office. Provided always, and it is further agreed between the said and
 the said company, that the said shall and will on being discharged
 from his office of or ceasing to act as such official liquidator as aforesaid forthwith
 give notice thereof in writing and also furnish to the said company free of

charge an office copy of the order of the Court or Judge discharging him from his office as such official liquidator as aforesaid. And further, that he, the said Form 14.
his heirs, executors, and administrators, shall and will from time to time and at all times save, defend, and keep harmless the said company and their successors and the property and funds of the said company from and against all loss and damage, costs and expenses which the said company or the funds or property thereof shall or may or otherwise might at any time sustain, or be put unto or for or by reason or in consequence of the said company having entered into the above-written bond for and at the request of the said

In witness whereof the said hath hereunto set his hand and seal and the said company have hereunto caused their common seal to be affixed the day and year first above written.]

(a) p. 175.

No. 12. *Sanction of Appointment of Solicitor to Official Liquidator and Appointment (a).*

In the Matter, &c.

The Primary Judge in Equity sanctions the official liquidator appointing a solicitor, to assist him in the performance of his duties.

G.H.,

Master in Equity.

I hereby appoint Messrs. C. and D., of &c., to be my solicitors in this matter.

Dated this day of , 18 .

R.P.H., Official Liquidator.

(a) s. 156, *supra*, p. 77.

No. 13. *Order for Payment of Money or Delivery of Books, &c., to the Official Liquidator (a).*

The Primary Judge in Equity. } day, the day of
18 .

At Chambers.

In the Matter, &c.

Upon the application of, &c., and on reading, &c., I do order that A.B., of &c., do within four days after service hereof, pay to [or, deliver, convey, surrender, or transfer to or into the hands of] R.P.H., the official liquidator of the said company, at the office of the said R.P.H., situate at &c., the sum of £ , being the amount of debt appearing to be due from the said A.B., on his account with the said company [or, any sum or balance, books, papers, estate, or effects], [or specifically describe the property] now being in the hands of the said A.B., and to which the said company is *prima facie* entitled [or otherwise, as the case may be.]

(a) ss 159, 160, *supra*, pp. 78, 79.

No. 14. *Direction to open Account at the Bank. [Rules 11, 41 (a).]*

The Primary Judge in Equity. } day of
18 .

At Chambers.

In the Matter, &c.

To the Manager of the Bank

Sir,

An order, dated the day of , 18 , having been made in the above matter by the Primary Judge in Equity for winding-up the above-named company by the Court, under the provisions of the said Act, and R.P.H., of , having by order dated the day of 18 , been

Form 15. appointed the official liquidator of the said company, you are requested to open an account, to be entitled "The account of the official liquidator of the company," in your books, pursuant to the said Act.

All cheques drawn upon such account must be signed by the official liquidator, whose signature is attached hereto, and countersigned by the Master in Equity.

I am, Sir,

Your most obedient Servant,

G.H.,

Master in Equity.

Signature.

R.P.H., Official Liquidator.

(a) Cf. RR. 31, 35—42, *supra*.

No. 15. Advertisement of Appointment of Official Liquidator. [Rule 14 (a).]

In the Matter, &c.,

The Primary Judge in Equity has, by an order dated
the day of 18, appointed R.P.H., of , to be official
liquidator of the above-named company.

Dated this day of 18 .

G.H.,

Master in Equity.

(a) *Supra*, p. 176.

No. 16. Advertisement for Creditors [Rule 20 (a).]

In the Matter of, &c.,

The creditors of the above-named company are required, on or before the day of 18, to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors, if any, to R.P.H., of , the official liquidator of the said company, and, if so required by notice in writing from the said official liquidator, are by their solicitors to come in and prove their said debts or claims, at the chambers of the Primary Judge [or, Master's office] in Chancery Square, at such time as shall be specified in such notice, or in default hereof they will be excluded from the benefit of any distribution made before such debts are proved.

day the day of 18, at o'clock in the noon,
at the said chambers, [or Master's office] appointed for hearing and adjudicating upon the debts and claims.

Dated this day of 18 .

G.H.,

Master in Equity.

(a) *Supra*, p. 177.

No. 17. Affidavit of Official Liquidator as to Debts and Claims. [Rule 22 (a).]

In the Supreme Court of }
New South Wales. }
In Equity. }

In the Matter, &c.

I, R.P.H., of &c., the official liquidator of the above-named company, make oath and say as follows:—

1. I have in the paper writing now produced and shown to me, and marked with the letter A, set forth a list of all the debts and claims the particulars of

which have been sent in to me by persons making claims upon or claiming to be creditors of the said company, pursuant to the advertisement issued in that behalf, dated the day of 18 ; and the names and addresses of the persons by whom such claims are made. **Form 18.**

2. I have investigated the said debts and claims, and examined the same with the books and documents of the said company, in order to ascertain, so far as I am able, which of such debts and claims are justly due from the said company; and I have, in the first part of the said list, set forth such of the said debts and claims, or parts thereof, as, in my opinion, are justly due from the said company, and proper to be allowed without further evidence; and I have, in the sixth column of the said first part of the said list, set forth the amounts proper to be allowed in respect of such debts and claims; and I believe that such amounts respectively are justly due and proper to be allowed; and I have, in the seventh column of the said first part of the said list, stated my reasons for such belief.

3. I have, in the second part of the said list, set forth such of the said debts and claims as in my opinion ought to be proved by the respective creditors.

Sworn, &c.

(a) *Supra*, p. 178.

No. 18. *Exhibit referred to in Affidavit No. 17.*

A.

In the Matter, &c.

List of debts and claims of which the particulars have been sent in to the official liquidator.

This paper writing, marked A, was produced and shown to R.P.H., and is the same as is referred to in his affidavit, sworn before me this day of 18 .

W. B. &c.

First Part.—Debts and Claims proper to be allowed without further evidence.

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount claimed. £ s. d.	Amount proper to be allowed. £ s. d.	Reasons for belief that amounts are proper to be allowed.

Second Part.—Debts and Claims which ought to be proved by the Creditors.

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount claimed. £ s. d.

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Form 19.

No. 19. *Notice to Creditor of Allowance of Debts.* [Rule 23 (a).]

In the Matter, &c.

[Place and date.]

Sir,

The debt claimed by you in this matter has been allowed by the Judge at the sum of £ [If part only allowed, add, If you claim to have a larger sum allowed, you are hereby required to come in and prove the further amount claimed, &c., as in next form.]

I am, &c.,

R. P. H., Official Liquidator.

To Mr. P. B.

(a) *Supra*, p. 178.

No. 20. *Notice to Creditors to come in and prove their Debts.* [Rule 24 (a).]

In the Matter, &c.

You are hereby required to come in and prove the debt claimed by you against the above-named company, by filing your affidavit, and giving notice thereof to me, on or before the day of next; and you are to attend by your solicitor at the chambers of the Primary Judge [or Master's Office] in Chancery Square, on the day of 18, at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim.

Dated this day of 18

R. P. H., Official Liquidator.

To Mr. S. T.

(a) *Supra*, p. 179.

No. 21. *Affidavit of Creditor in proof of Debt.* [Rule 24 (a).]

In the Supreme Court of }
New South Wales. }
In Equity. }

In the Matter, &c.

I, S. T., of &c., make oath and say as follows:—

1. The above-named company was, on the day of 18 the date of the order for winding-up the same, and still is justly and truly indebted to me in the sum of £ for, &c. [Describe shortly the nature of the debt, and exhibit any security for it; and in the case of a trade debt exhibit a bill of parcels, and verify the reasonableness of the charges, as in proving a debt in a suit.]

2. I have not, nor hath, nor have any person or persons by my order, or to my knowledge or belief, for my use received the said sum of £ or any part thereof, or any security or satisfaction for the same or any part thereof [if any security add]. except the said [describe the security] hereinbefore mentioned or referred to.

Sworn, &c.

(a) *Supra*, p. 179.

No. 22. *Certificate of the Master, as to Debts and Claims.* [Rule 27 (a).]

In the Matter, &c.

In pursuance of the directions given to me by the Primary Judge in Equity, I hereby certify that the result of the adjudication upon debts and claims against the above-named company, brought in pursuant to the advertisement issued in that behalf, dated the day of 18, so far as such

RULES OF COURT—THE SCHEDULE.

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adjudication has up to the date of this certificate been proceeded with, is as follows :— **Form 23.**

The debts and claims which have been allowed are set forth in the First Schedule hereto, and, with the interest thereon and costs mentioned in the said schedule, are due to the persons therein named and amount altogether to £

I have in the said schedule set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry down to the date of this certificate.

The claims set forth in the Second Schedule hereto have been brought in by the persons therein named, and have been disallowed.

The evidence produced, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Debts and Claims which carry interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Total due.
1.	J. L.	29 Street, Sydney, Stationer	On Bill of Ex- change, dated &c.	£ s. d.
		Principal.....	£	
		Interest at £ per centum per annum. from 18 , to the date of this certificate	£	
		Costs of Proof	£	
			Total First Part £	

THE SECOND SCHEDULE ABOVE REFERRED TO.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed.
				£ s. d.

Dated this day of 18 .

G. H.,
Master in Equity.

Approved the
day of , 18 . }
(a) *Supra*, p. 179.

No. 23. Notice to Creditor to attend to receive Debt (a).

In the Matter, &c.

Sir,
Upon application at my office, No. street, Sydney, on or
after the instant, between the hours of ten and four o'clock, you may
receive a cheque for the amount of your debt, allowed in this matter as under :—

Principal	£
Interest	£
Costs of proof	£
Total	£

Form 24. If you cannot attend personally, the cheque will be delivered to your order, upon your filling up and signing the subjoined form.

The bills or securities (if any) held by you must be produced at the time of such application.

Dated this day of 18 .

I am, &c.,
E.P.H., Official Liquidator.

To Mr. S. T.

[Form of Order.]

Sir,

Please to deliver to W. R. the cheque for £ referred to in
the above letter as payable to me. S.T.,
Creditor.

To Mr. E.P.H., Official
Liquidator of the

Company.

(a) E. 27, *supra*, p. 179.

No. 24. Affidavit in support of List of Contributories.

[Rule 28 (a).]

In the Supreme Court
of New South Wales.
In Equity.

In the Matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named company, make oath, and say as follows:—

1. The paper writing now produced and shown to me, and marked with the letter A, contains a list of the contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses, and the number of shares [or, extent of interest], to be attributed to each; and such list is, to the best of my knowledge, information, and belief, a true and accurate list of the contributories of the said company, so far as I have been able to make out and ascertain the same.

2. I have, in the first part of the said list marked A, distinguished the persons who are contributories in their own right.

3. I have, in the second part of the said list marked A, distinguished the persons who are contributories as being representatives of, or being liable to the debts of others.

Sworn, &c.

(a) *Supra*, p. 179.

No. 25. List of Contributories referred to in Form No. 24.

A.

In the Matter, &c.

This list of contributories marked A, was produced and shown to R.P.H., and is the same list of contributories as is referred to in his affidavit, sworn before me this day 18 .

W.B., &c.

First Part.—Contributories in their own right.

Serial No.	Name.	Address.	Description.	In what Character included (a).	Number of Shares [or, extent of interest].

(a) The usual entry under this head is "as a present member."

Second Part.—Contributories as being Representatives, or liable to the debts of others.

Form 27.

Serial No.	Name.	Address.	Description.	In what Character included (b).	Number of Shares [or, extent of interest].

(b) e.g., "as the executors of , deceased."

No. 26. Notice to Contributors of Appointment to Settle List of Contributories
[Rule 29 (a).]

In the Matter, &c.

The Primary Judge in Equity has appointed the day of 18, at of the clock in the noon at his chambers [or, the Master's office], in Chancery Square, to settle the list of the contributories of the above-named company, made out and left at the chambers of the said Judge by the official liquidator of the said company, and you are included in such list in the character, and for the number of shares [or, extent of interest] stated below; and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled by the said Judge, including you therein.

Dated this day of 18 .

R.P.H., Official Liquidator.

To Mr. A.B. [and to }
Mr. C. D., his solicitor.† }

No. on List.	Name	Address.	Description.	In what Character included.	Number of Shares [or, extent of interest].

(a) *Supra*, p. 180.

No. 27. Affidavit of Service of Notice. [Rule 29 (a).]

In the Supreme Court
of New South Wales.
In Equity.

In the Matter, &c.

I, W. S., of &c., clerk to Messrs. C. and D., of &c., the solicitors of the official liquidator of the above-named company, make oath and say as follows:—

1. The first six columns of the schedule now produced and shown to me, and marked with the letter A, contain a true copy of the list of contributories of the said company, made out and left at the chambers of the Primary Judge [or, the Master's office] by the said official liquidator, on the day of 18, and now on the file of proceedings of the said company, as I know from having, on the day of 18, examined and compared the said schedule with the said list; and I have, in the seventh column of the said schedule marked A, set forth the names and addresses of the solicitors

Form 28. who have entered appearances for any of the contributories named in the said list.

2. I did, on the day of 18 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me, and marked B, upon each of the respective persons whose names, addresses, and descriptions appear in the second, third, and fourth columns of the said schedule marked A, except that in the tabular form at the foot of such copies respectively I inserted the number on list, name, address, description, in what character included, and number of shares [or, extent of interest] of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule marked A.

3. I served the said respective copies of the said notice by putting such copies respectively, duly addressed to such persons respectively or their solicitors, according to their respective names and addresses appearing in the said schedule marked A, and, with the proper postage stamps affixed thereto as prepaid letters, into the General Post Office between the hours of and of the clock in the noon of the said day of Sworn, &c.

(a) *Supra*, p. 180.

No. 28. *The Schedule referred to in Form No. 27.*

A.

In the Matter, &c.

This schedule marked A was produced and shown to W.S., and is the same schedule as is referred to in his affidavit, sworn before me this day of 18 .

W.B., &c.

1. Number on List.	2. Name.	3. Address.	4. Description.	5. In what character included.	6. Number of Shares [or, extent of interest.]	7. Names and addresses of Solicitors who have entered appearances, and been served with a copy of the notice referred to in the affidavit of W.S., to which this schedule is an exhibit.

No. 29. *Supplemental List of Contributories, and Affidavit in Support*
[Rule 29 (a).]

In the Supreme Court of }
New South Wales. }
In Equity. }

In the Matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named company, make oath, and say as follows:—

1. Since leaving at the chambers of the Judge [or Master's office] the list of the contributories in this matter, on the day of 18 , it has come to my knowledge that the several persons whose names are set forth in the supplemental list of contributories now produced and shown to me, and marked with the letter B, are, or have been holders of shares in [or, members of] the said company, and to the best of my judgment, information, and belief such persons are contributories of the said company.

2. The said supplemental list marked B, contains the names of such persons, together with their respective addresses, and the number of shares [or, extent

Form 31.

4. I have, in the second part of the list marked B, distinguished such of the said persons as are contributories as being representatives of, or being liable to the debts of others.

Sworn, &c.

(a) Cf. R. 28, *sub. fin.*, *supra*, p. 179.

No. 30. Supplemental List of Contributors, referred to in Form 29.

B.

In the Matter, &c.

This supplemental list of contributors made B was produced and shown to R. P. H., and is the same supplemental list of contributors as is referred to in his affidavit, sworn before me this day of 18 .

W.B., &c.

Note.—The Supplemental List is to be made out in the same form as the Original List, Form No. 25.

No. 31. Certificate of the Master in Equity of Settlement of the List of Contributors. [Rule 30 (a).]

In the Matter, &c.

In pursuance of the directions given to me by the Primary Judge in Equity, I hereby certify that the result of the settlement of the list of contributories of the above-named company, made out by the official liquidator of the said company on the day of 18 , pursuant to the above statute and the General Order of this Court in that behalf, so far as the said list has been settled up to the date of this certificate, is as follows:—

1. The several persons whose names are set forth in the second column of the First Schedule hereto, have been included in the said list of contributories as contributories of the said company in respect of the number of shares [or, extent of interest] set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list as are contributories in their own right.

I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories, as being representatives of, or being liable to the debts of others.

2. The several persons whose names are set forth in the second column of the Second Schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh column of the said First and Second Schedules, set forth opposite the name of each of the said several persons respectively, the date when such person was included in or excluded from the said list of contributors.

The evidence produced, &c.

(a) *Supra*, p. 180.

THE FIRST SCHEDULE ABOVE REFERRED TO.

First Part.—Contributories in their own right.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of interest.]	Due (a) when included in the List.

(a) Sic ; apparently for "date."

Form 32. *Second Part.*—Contributories as being representatives of, or liable to the debts of others.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of interest.]	Date when included in the List.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Serial No. in List.	Name.	Address.	Description.	In what Character proposed to be included.	Number of Shares [or extent of interest.]	Date when excluded from the List.

Dated this day of 18 .

G.H.,
Master in Equity.Approved the }
day of 18 . }No. 32. *Order on Application to review List (a).*The Primary Judge } day, the day of 18
at Chambers.]

In the Matter, &c.

Upon the application of W.N. to review the list of contributories of the said company in respect of the inclusion of the said W.N. therein, and that his name may be excluded therefrom, and upon hearing counsel, &c., and upon reading, &c., I do order that the name of the said W.N. be excluded from the said list of contributories [or, I do not think fit to make any Order on the said application, except that the said W.N. do pay to R.P.H., the official liquidator of the said company, his costs of this application, to be taxed by the Taxing Officer in case the parties differ.]

(a) R. 28, *supra*, p. 179.No. 33. *Affidavit of Official Liquidator in support of proposal for Call.*
[Rule 32 (a).]In the Supreme Court of }
New South Wales. }
In Equity. }

In the Matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named company, make oath and say as follows:—

1. I have, in the schedule now produced and shown to me, and marked with the letter A, set forth a statement, showing the amount due in respect of the debts allowed against the said company, and the estimated amount of the costs,

charges, and expenses of and incidental to the winding-up the affairs thereof, and which several amounts form in the aggregate the sum of £ or **Form 36.**
thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of £ and no more. There are no other assets belonging to the said company, except the amounts due from certain of the contributories of the said company, and, to the best of my information and belief, it will be impossible to realise in respect of the said amounts more than the sum of £ or thereabouts.

3. It appears by the Master's certificate, dated the day of 18 , that persons have been settled on the list of contributories of the said company in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said company, and of paying the costs, charges, and expenses of and incidental to the winding-up the affairs thereof, I believe the sum of £ will be required, in addition to the amount of the assets of the said company mentioned in the said Schedule A, and the said sum of £ .

5. In order to provide the said sum of £ , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that, for the purpose of realising the amount required as before mentioned, it is necessary that a call of £ per share should be made.

Sworn, &c,

(a) *Supra*, p. 181.

No. 34. Summons for intended Call. [Rule 33 (a).]

In the Matter, &c.

Let all parties concerned attend at my chambers [or Master's office] in Chancery Square, on day, the day of 18 , at of the clock in the noon, on the hearing of an application on the part of the official liquidator of the abovenamed company, that a call to the amount of £ per share may be made on all the contributories [or, if upon any particular class, specify the same] of the said company.

This summons was taken out by A. & B., of in the county (b) of , solicitors for the said official liquidator.

To Mr. A. B., of &c., a contributory of the said }
company proposed to be included in the said call. }

(a) *Sic. R. 32, supra*, p. 181. (b) *Sic.*

No. 35. Advertisement of intended Call. [Rule 33 (a).]

In the Matter, &c.

By direction of the Primary Judge in Equity notice is hereby given that the said Judge has appointed the day of 18 , at o'clock in the noon, at his chambers [or Master's office] Chancery Square, to make a call on all the contributories of the said company [or, as the case may be], and that the official liquidator of the said company proposes that such call shall be for £ per share. All persons interested are entitled to attend at such day, hour, and place, to offer objections to such call.

Dated this day of 18 .

G. H.,
Master in Equity.

(a) *Sic. R. 32, supra*, p. 181.

No. 36. General Order for a Call. [Rule 33 (a).]

The Primary Judge } the day of
at Chambers. } 18 .

In the Matter, &c.

Upon the application of the official liquidator of the above-named company, and upon reading two Orders, dated the day of 18 , and the

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Form 37.

day of 18 , the Master's certificate, dated the day of 18 , affidavit of the said official liquidator, filed 18 , and the exhibit marked A therein referred to, and an affidavit of filed 18 , I do order that a call of pounds per share be made on all the contributories of the said company [or, as the case may be]. And I do order that each such contributory do, on or before the day of 18 , pay into the Bank, to the account of the official liquidator of the company, the amount which will be due from him or her in respect of such call.

(a) *Supra*, p. 181.

No. 37. Notice to be served with the General Order for a Call. [Rule 33 (a).]

In the Matter, &c.

The amount due from you, A. B., in respect of the call made by the above [or, within] order, is the sum of £ which sum is to be paid by you into the Bank, to the account mentioned in the said order. You can pay the same in person, or through a banker or other agent; but this notice and copy order must be produced at the bank upon such payment, and the cashier of the bank will, upon receiving the same, deliver to you a certificate of the payment in, numbered , signed by the said cashier. In order to prevent proceedings being taken against you for non-payment, you must, immediately upon such payment in, cause written notice of the payment, and of the date thereof to be given to me as the official liquidator of the said company, at my office, No. street.

Dated this day of 18 .

R. P. H., Official Liquidator.

To Mr. A. B.

(a) *Supra*, p. 181.

No. 38. Affidavit in support of Application for Order for Payment of Call due from Contributories. [Rule 34 (a).]

In the Supreme Court
of New South Wales.
In Equity.

In the Matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named company, make oath, and say as follows:—

1. None of the contributories of the said company whose names are set forth in the schedule hereunto annexed, marked A, have paid, or caused to be paid, the respective sums set opposite their respective names in the said schedule, and which sums are the respective amounts now due from them respectively in respect of the call of £ per share, in pursuance of the Order of the Judge in that behalf, dated the day of 18 .

2. The respective amounts or sums set opposite the names of such contributories respectively in such schedule, are the true amounts due and owing by such contributories respectively in respect of the said call.

Sworn, &c.

THE SCHEDULE ABOVE REFERRED TO.

A.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount Due.		
					£	s.	d.

Note.—In addition to the above affidavit, an affidavit of the service of the Order and Notice (b), Nos. 36 and 37, will be required.

(a) *Supra*, p. 182.

(b) R. 34, *ib.*

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No. 39. Order for Payment of Call due from a Contributory. [Rule 34 (a).] Form 41.

day, the day of
] at Chambers. } 18 .
 In the Matter, &c.

Upon the application of the official liquidator of the above-named company, and upon reading the Order, dated the day of 18 , an affidavit of filed the day of 18 , and an affidavit of the said official liquidator filed the day of 18 , I do order, that C. D., of &c. [or, E. F., of &c., the legal personal representative of L. M., late of, &c., deceased], one of the contributories of the said company [or if against several contributories, the several persons named in the second column of the schedule to this Order being respectively contributories of the said company] do, on or before the day of 18 , or within four days after service of this Order, pay into the Bank, to the account of the official liquidator of the company [or, to A. B., the official liquidator of the said company at his office, No. street, the sum of £ [if against a legal personal representative, add], out of the assets of the said L. M., deceased, in his hands as such legal personal representative as aforesaid to be administered in a due course of administration (b) if the said E. F. has in his hand so much to be administered; [or if against several contributories, the several sums of money set opposite to their respective names in the sixth column of the said schedule hereto], such sum [or, sums] being the amount [or amounts] due from the said C. D. [or, L. M.] [or, the said several persons respectively] in respect of the call of £ per share made by the said Order dated the day of 18 .

THE SCHEDULE REFERRED TO IN THE FOREGOING ORDER.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount Due.
					£ s. d.

Note.—The copy for service of the above Order must be endorsed as shown in No. 42 (c).

(a) *Supra*, p. 182. (b) See note in Buckley, p. 653. (c) *Infra*.

No. 40. Notice to be endorsed on, or served with every Order directing Payment of Money into the Bank. [Rule 38 (a).]

You can make the payment directed by the within [or, above] Order at the Bank in person, &c. [as in the Form No. 37 (b).]

R. P. H., Official Liquidator.

To Mr.

(a) *Supra*, p. 183. (b) *Ib.*, p. 183.

No. 41. Certificate of Payment of Money into the Bank. [Rule 39 (a).]

In the Matter, &c.

No. day of 18 .

I hereby certify that C. D., of &c., has this day paid into the Bank the sum of £ , to be placed to the credit of the official liquidator of the

Form 42.

company, pursuant to an Order dated the day of 18 .
For the Bank,

H. M.,
Cashier.

£

(a) *Sic.* R. 38, *Supra*, p. 183.

No. 42. Affidavit of Service of Order for Payment of Call. [Rule 34 (a).]

In the Supreme Court
of New South Wales. }

In Equity.

In the Matter, &c.

I, J. B., of &c., make oath, and say as follows:—

1. I did, on the day of 18 , personally serve G. F., of , in the county of (b) , &c., with an Order made in this matter by his Honour the Primary Judge in Equity, dated the day of 18 , whereby it was ordered [*set out the Order in the past tense*] by delivering to and leaving with the said G. F. at in the county of (b) , a true copy of the said Order, and at the same time producing and showing unto him the said G. F., the said original Order duly entered.

2. There was endorsed on the said copy, when so served, the following words, that is to say, "If you, the within-named G. F., neglect to obey this Order, by the time therein limited, you will be liable to be arrested under a writ of attachment issued out of the Supreme Court, and also be liable to have your estate sequestrated for the purpose of compelling you to obey the same Order.

Sworn, &c.

(a) *Supra*, p. 182.

(b) *Sic*, and see *passim*.

No. 43. Affidavit of Non-payment of Money by Order directed to be paid into the Bank. [Rule 39 (a).]

In the Supreme Court
of New South Wales. }

In Equity.

In the Matter, &c.

I, R. P. H., of &c., the official liquidator of the above-named company, make oath, and say as follows:—

1. G. F., the person named in an Order made in this matter by his Honour the Primary Judge in Equity , dated day of 18 , has not paid into the Bank to the account of the official liquidator of the company, the whole or any part of the sum of £ as by the said Order directed.

[Or, in case of several parties.]

1. None of the several persons whose names and addresses are set forth in the schedule hereunder written, and who have respectively been duly served with orders made in this matter by his Honour the Primary Judge in Equity , of the respective dates set opposite to their respective names in the said schedule, have paid into the Bank to the account of the official liquidator of the company, the whole or any part of the several sums of money set opposite to the respective names in the said schedule, hereunder written, as by the said Orders respectively directed.

2. I am enabled to depose to such non-payment, by reason of my having this day ascertained, by inquiry at the said Bank, that such payment [*or, payments*] has [*or, have*] not been made, and seen the certificate of payment in, numbered [*or, several certificates of payment in, the numbers whereof respectively are set forth in the sixth column of the said schedule, opposite the names of the said respective persons, being certificates*] furnished by me to the

cashier of the said bank for delivery to the said G. F. [or, several persons respectively] upon such payment [or, payments] being made, still in the hands of the cashier of the said bank. No notice [or, notices] of such payment [or, payments] having been made has [or, have] been given to me by the said G. F. [or, several persons respectively.] **Form 46.**

Sworn, &c.

THE SCHEDULE ABOVE REFERRED TO.

Name.	Address.	Description.	Amount.	Date of Balance Order.	Number of Certificate.
			£ s. d.		

(a) *Supra*, p. 184.

No. 44. Notice [or Advertisement] of Meeting of Creditors or Contributories.
[Rules 43, 44 (a).]

In the Matter, &c.

Notice is hereby given that the Primary Judge in Equity has directed a meeting of the creditors [or, contributories] of the above-named company to be summoned pursuant to the above statute, for the purpose of ascertaining their wishes as to [state the object for which meeting called unless notice is by advertisement, in which case say, certain matters relating to the winding-up of the said company], and that such meeting will be held on day, the day of 18 , at o'clock in the noon, at , at which time and place all the creditors [or, contributories] of the said company are requested to attend. [The said Judge (or Master) has appointed H. T., of &c., to act as chairman of such meeting.]

Dated this day of 18 .

E. P. H., Official Liquidator.

(a) *Supra*, p. 185.

No. 45. Appointment of Proxy to Vote at Meeting of Creditors or Contributories.
[Rule 44 (a).]

In the Matter, &c.

I, W. S., of in the county of being a creditor [or, contributory] of the above-named company, hereby appoint of as my proxy to vote for me, and on my behalf, at the meeting of the creditors [or, contributories] of the said company, summoned by direction of the Primary Judge in Equity, to be held on the day of and at any adjournment thereof.

As witness my hand this day of 18 .

W. S.

Signed by the said W. S. }
in the presence of

J. M., of &c.

(a) *Supra*, p. 185.

No. 46. Memorandum of Appointment of a Person to act as Chairman at Meeting of Creditors or Contributories. [Rule 45 (a).]

In the Matter, &c.

The Primary Judge [or Master] has appointed Mr. H. T., of &c., one of the creditors [or, contributories] of the above-named company, to act as chairman of a meeting of the creditors [or, contributories] of the said company, summoned by direction of the said Judge, pursuant to the above statute, to be

Form 47. held on day, the day of 18 , at o'clock in the
 noon, at , in the county of , and to report the result of
such meeting to the said Judge.

The said meeting is summoned for the purpose of ascertaining the wishes of the creditors [or, contributories] of the said company as to [state the object for which meeting called]; and at such meeting the votes of the creditors [or, contributories] may be given either personally or by proxy.

Dated this day of 18 .

G. H.,
Master in Equity.

(a) *Supra*, p. 185.

No. 47. Chairman's Report of Result of Meeting of Creditors or Contributories.
[Rules 43, 44, 45 (a).]

In the Matter, &c.

I, H. T., the person appointed by the Primary Judge [or Master] to act as chairman of a meeting of the creditors [or, contributories] of the above-named company, summoned by advertisement [or, notice] dated the day of , 18 , and held on the day of 18 , at in the county of , do hereby report to the said Judge the result of such meeting as follows:—

The said meeting was attended, either personally or by proxy, by creditors, to whom debts against the said company have been allowed, amounting in the whole to the value of £ [or, by contributories, holding in the whole shares in the said company, and entitled respectively by the regulations of the company, to the number of votes hereinafter mentioned].

The question submitted to the said meeting was, whether the creditors [or, contributories] of the said company approved of the proposal of the official liquidator of the said company, that &c. [as the case may be], and wished that such proposal should be adopted and carried into effect.

The said meeting was unanimously of opinion that the said proposal should [or, should not] be adopted and carried into effect, [or, the result of the voting upon such question was as follows:—

The undermentioned creditors [or, contributories] voted in favour of the said proposal being adopted and carried into effect:—

Name of Creditor [or, Contributory].	Address.	Value of Debt [or, Number of Shares].	Number of Votes conferred on each Contributory by the regulations of the Company.

The undermentioned creditors [or, contributories] voted against the said proposal being adopted and carried into effect:—

Name of Creditor [or, Contributory].	Address.	Value of Debt [or, Number of Shares].	Number of Votes conferred on each Contributory by the regulations of the Company.

Dated this day of 18 . (Signed) H. T.,
Chairman.

(a) *Supra*, p. 185.

No. 48. Memorandum of Sanction of Judge to accepting Bill of Exchange. **Form 49.**
[Rule 46 (a).]

In the Matter, &c.
The Primary Judge in Equity has sanctioned the acceptance of this bill of exchange by the official liquidator on behalf of the said company.

G. H.,
Master in Equity.

(a) *Supra*, p. 185.

No. 49. Memorandum of Agreement of Compromise with a Contributory (a).
[Rule 47 (b).]

In the Matter, &c.

Memorandum of agreement entered into this day of , 18 , between R. P. H., of &c., the official liquidator of the above-named company of the one part, and S. B., of &c., one of the contributories of the said company, of the other part.

Whereas the said S. B., has been settled on the list of contributories of the said company as a contributory in respect of shares in the said company, and whereas, by an order made by the Primary Judge in Equity, dated the day of , 18 , a call of £ per share was made on all contributories of the said company, and there is now due from the said S. B. to the said company the sum of £ in respect of the said call. And whereas the said S. B. has proposed to pay the said official liquidator the sum of £ by way of compromise, and in satisfaction and discharge of the said sum of £ , and of all liability whatsoever, as a contributory of the said company. And whereas the said official liquidator, having investigated the affairs of the said S. B., and believing that such compromise may be beneficial to the said company, hath, in exercise of the power for that purpose given to him by the above statute, agreed to accept the same, subject to the sanction of the said Judge, and to the conditions and agreements hereinafter contained. Now it is hereby agreed by and between the said parties hereto :—

1st. That the said official liquidator shall, before the day of next, apply to the said Judge at chambers to sanction this agreement of compromise.

2nd. That upon this agreement being sanctioned by the said Judge, the said S. B. shall, within days next after such sanction, pay to the said official liquidator the said sum of £ , and when thereto required, shall do and execute all such acts and deeds as may be necessary for transferring, or surrendering and releasing to the said official liquidator on behalf of the said company, or in such manner as the said Judge may direct, the said shares held by the said S. B. in the said company, and all claim and demand whatsoever which the said S. B. has, or may have, against the said company, in respect of the said shares, or the distribution of the assets of the said company, or otherwise howsoever.

3rd. That the said sum of £ , and the transfer or surrender and release of the said shares and interest of the said S. B., as aforesaid, shall be accepted by the said official liquidator as, and be deemed and taken to give to the said S. B., a full and complete discharge from all calls and liabilities, claims, and demands whatsoever, which the said company, or the official liquidator thereof now has or may hereafter have, or be entitled to against the said S. B., in respect of his being or having been the holder of the said shares, or otherwise, as a contributory of the said company.

4th. That in case this agreement shall not be sanctioned by the said Judge, it shall cease and determine, and the said official liquidator and the said S. B. shall be remitted to their original right with respect to each other, as if this agreement had not been entered into.

5th. That in case this agreement shall be sanctioned by the said Judge, and the said S. B. shall not in all respects perform the same on his part, the official liquidator shall be at liberty, with the sanction of the said Judge, and without notice to the said S. B., to enforce the performance thereof, or with the like

Form 50. sanction, to give notice to the said S.B. that he abandons this agreement, whereupon the same shall cease and determine (c) and the said official liquidator shall be entitled to proceed against the said S.B. to enforce payment of the said sum of £ , or so much thereof as shall then remain due and unpaid, as if this agreement had not been entered into (d).

R.P.H., Official Liquidator.
S.B.

Witness to the signatures of }
the said R.P.H. and S.B. }
C.D., of &c. }

(a) See notes in Buckley, pp. 135, 279, 366, 367.

(c) See Buckley, p. 367

(d) *Id.*, p. 668.

(b) *Supra*, p. 186.

No. 50. *Memorandum of Sanction of Judge to Agreement of Compromise.* [Rule 47 (a).]

In the Matter, &c.

The Primary Judge

has sanctioned this agreement of compromise.

G.H.,

Master in Equity.

(a) *Supra*, p. 186.

No. 51. *Order or Memorandum of the Sanction of the Judge for certain acts to be done by the Official Liquidator.* [Rule 50 (a).]

Primary Judge

at Chambers. }

day of

18 .

In the Matter, &c.

The Primary Judge doth hereby sanction [or, has sanctioned] the following proceedings being taken [or, acts being done] by the official liquidator of the above-named company, namely [state the proceedings to be taken or acts to be done as], the bringing [or, instituting] and prosecuting an action at law [or, suit in equity], in the name and on behalf of the said company, against [or, defending an action at law [or, suit in equity] brought [or, instituted] against the said company by] K.M., of &c., to recover a debt or sum of £ alleged to be due from [or, to] the said K.M. to [or, from] the said company, &c.

G.H.,

Master in Equity.

(a) *Sic.* R. 48, *supra*, p. 186.

No. 52. *Appearance Book.* [Rule 59 (a).]

In the Matter, &c.

Appearance Book.

Date when Appearance entered.	Party's Name.	Whether Creditor or Contributory.	If he appears in person, his Address for service.	If he appears by a Solicitor, his Solicitor's name.	Solicitor's Address.	Amount of Debt [or Number of Shares.]

(a) *Supra*, p. 189.

No. 53. *Summons for Persons to attend at Chambers to be examined (a).*

Form 55.

In the Supreme Court of }
New South Wales. }
In Equity. }

In the Matter, &c.

A.B., of &c., and E.F., of &c., are hereby severally summoned to attend at the chambers of the Primary Judge [or Master] in Chancery Square, on day of 18, of the clock in the noon, to be examined on the part of the official liquidator [or, of W.D., of &c.], for the purpose of proceedings directed by the Primary Judge in Equity to be taken before me in the above matter. [And the said A.B. is hereby required to bring with him and produce, at the time and place aforesaid, a certain indenture [describe documents] and all other books, papers, deeds, writings, and other documents in his custody or power in anywise relating to the above-named company.]

Dated this day of 18.

G.H.,

Master in Equity.

This summons was taken out by Messrs. C. and D., of , in the county of , solicitors for the official liquidator [or, for the said W.D.]

(a) s. 173, *supra*, p. 83.

No. 54. *Certificate of the Company being completely wound-up and of the Official Liquidator having passed his final Account.* [Rule 63 (a).]

In the Matter, &c.

In pursuance of the directions given to me by the Primary Judge in Equity, I hereby certify that R.P.H., the official liquidator of the above-named company, has passed his final account as such official liquidator, and that the balance of £ thereby certified to be due to [or, from] the said official liquidator has been paid in the manner directed by the order dated the day of 18. And that the affairs of the said company have been completely wound-up.

The evidence produced, &c.

Dated this day of 18.

G.H.,

Master in Equity.

Approved the }
day of 18 . }

(a) *Supra*, p. 191.

No. 55. *Order to Dissolve the Company.* [Rule 63 (a).]

The Primary Judge } , the day of 18
at Chambers. }

In the Matter, &c.

Upon the application of the official liquidator of the above-named company, and upon reading an order dated the day of , and the Master's certificate, dated the day of , whereby it appears that the affairs of the said company have been completely wound-up, and that the balance of £ , due from [or, to] the official liquidator, has been paid in manner directed by the said order, it is ordered that the said company be dissolved, as from this day of 18 , and that the recognition dated the day of 18 , entered into by the said official liquidator, together with W.B. and T.P., his sureties, be vacated.

(a) *Supra*, p. 191.

Form 56.**THE SCHEDULE (*sic*).****No. 56. Form of Order. [Rule 66 (a).]**Reduction of
capital.

The Primary Judge

In the Matter of The

Company, Limited and

at Chambers.

Reduced; and in the Matter of "The Com-
panies Act, "

Upon the application of the petitioners by summons, dated
and upon hearing the solicitor for the petitioners, and on reading the petition
on the day of preferred unto , I do order an inquiry
be made what are the debts, claims, and liabilities of or affecting the said
company on the day of 18 , and that notice of the
presentation of the said petition be inserted in [the newspapers] on the
day of and [other times of insertion], and that a list of the persons
who are creditors of the company on the said day of , and an
office copy of the affidavit verifying the same, be left at the Master's office on
or before the day of .

(a) *Supra*, p. 192.**No. 57. [See Rule 67 (a).]**Notice of
presentation of
petition.In the Matter of the Company, Limited and Reduced ;
and in the Matter of "The Companies Act, "

Notice is hereby given, that a petition for confirming a resolution reducing
the capital of the above company from £ to £ , was on the
day of presented to the Primary Judge in Equity, and is now
pending; and that the list of creditors of the company is to be made out as
for the day of 18

C. and D. of [Agents for A. and B., of].

Solicitors to the company.

(a) *Supra*, p. 192.**No. 58. Affidavit verifying List of Creditors. [Rule 69 (a).]**In the Supreme Court }
of New South Wales. }
In Equity.In the Matter of The Company, Limited and Reduced
and in the Matter of "The Companies Act, 18 ."

I, A.B., of &c., make oath, and say as follows:—

1. The paper writing now produced and shown to me, and marked with the
letter A, contains a list of the creditors of and persons having claims upon the
said company on the day of 18 (the date fixed by the Order
in this matter, dated), together with their respective addresses, and
the nature and amount of their respective debts or claims, and such list is, to
the best of my knowledge, information, and belief, a true and accurate list of
such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge and belief there was not, at the date aforesaid,
any debt or claim which, if such date were the commencement of the winding-
up of the said company, would be admissible in proof against the said company
other than and except the debts set forth in the said list. I am enabled to
make this statement from facts within my knowledge as the of
the said company, and from information derived upon investigation of the
affairs, and the books, documents, and papers of the said company.

Sworn, &c.

(a) *Supra*, p. 193.

List of Creditors referred to in the last Form.

Form 60.

A.

In the Matter, &c.

This list of creditors marked A was produced and shown to A.B., and is the same list of creditors as is referred to in his affidavit sworn before me this day of , 18 .

X.Y., &c.

Names, Addresses, and Description of the Creditors.	Nature of Debt or Claim.	Amount of Debt or Claim.

No. 59. [See Rule 71 (a).]

In the Matter of The Company, Limited and Reduced; Notice of reduction of capital.
and in the Matter of "The Companies Act, "

To Mr.

You are requested to take notice that a petition has been presented to the Primary Judge in Equity to confirm a special resolution of the above company for reducing its capital to £ , and that in the list of persons admitted by the company to have been on the day of creditors of the company, your name is entered as a creditor [here state the amount of the debt or nature of the claim].

If you claim to have been on the last-mentioned day a creditor to a larger amount than is stated above, you must on or before the day of send in the particulars of your claim, and the name and address of your solicitor (if any), to the undersigned at . In default of your so doing, the above entry in the list of creditors will in all the proceedings under the above application to reduce the capital of the company be treated as correct.

Dated this day of , 18 .

A.B.,
Solicitor for the said company.

(a) *Supra*, p. 193.

No. 60. [See Rule 72 (a).]

In the Matter of The Company, Limited and Reduced; Notice of list of creditors.
and in the Matter of "The Companies Act, "

Notice is hereby given, that a petition has been presented to the Primary Judge in Equity for confirming a resolution of the above company for reducing its capital from £ to £ . A list of the persons admitted to have been creditors of the company on the day of , 18 , may be inspected at the offices of the company at or at the office of , at any time during usual business hours, on payment of the charge of one shilling.

Any person who claims to have been on the last-mentioned day and still to be a creditor of the company, and who is not entered on the said list and claims to be so entered, must on or before the day of send in his name and address, and the particulars of his claim, and the name and address of his solicitor (if any), to the undersigned at , or in default thereof he will be precluded from objecting to the proposed reduction of capital.

Dated this day of , 18 .

A.B.,
Solicitor for the said company.

(a) *Supra*, p. 194.

Form 61.

No. 61. [Rule 73 (a).]

Affidavit verifying names and addresses and debts and claims.

In the Supreme Court of }
New South Wales. }
In Equity.

In the Matter of The _____ Company, Limited and Reduced ;
and in the Matter of "The Companies Act, _____"

We, C.D., of &c. [the secretary of the said company], E.F., of &c. [the solicitor of the said company], and A.B., of &c. [the managing director of the said company], severally make oath and say as follows :—

I, the said C.D., for myself, say as follows :—

1. I did, on the _____ day of _____, 18____, in the manner [Rule 71 (b).] hereinafter mentioned, serve a true copy of the notice now produced and shown to me, and marked B, upon each of the respective persons whose names, addresses, and descriptions appear in the first column of the list of creditors marked A, referred to in the affidavit of _____, filed on the _____ day of _____, 18____.

2. I served the said respective copies of the said notice by putting such copies respectively duly addressed to such persons respectively, according to their respective names and addresses appearing in the said list (being the last known addresses or places of abode of such persons respectively), and with the proper postage stamps affixed thereto as prepaid letters, into the Post Office, between the hours of _____ and _____ of the clock in the _____ noon of the said _____ day of _____.

And I, the said E.F., for myself, say as follows :—

If notice issued under Rule 73 (c). 3. A true copy of the notice now produced and shown to me, and marked C, has appeared in the _____ of the _____ day of _____, 18____, &c.

[Rule 73 (d).] 4. I have, in the paper writing now produced and shown to me, and marked D, set forth a list of all claims the particulars of which have been sent to me pursuant to the said Notice B now produced and shown to me by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors marked A, referred to in the affidavit of _____, filed on the _____ day of _____, 18____.

If Notice issued under Rule 72. 5. I have, in the paper writing now produced and shown to me, and marked E, set forth a list of all claims the particulars of which have been sent in to me pursuant to the notice referred to in the third paragraph of this affidavit by persons claiming to be creditors of the said company on the _____ day of _____, 18____, not appearing on the said list of creditors marked A, and who claimed to be entered thereon.

And we, C.D. and A.B., for ourselves, say as follows :—

[Rule 73 (d).] 6. We have in the first part of the said paper writing, marked D (now produced and shown to us), and also in the first part of the said paper writing marked E (also produced and shown to us), respectively set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted to be due in respect of such of the same debts and claims respectively as are not wholly admitted.

[Rule 73 (d).] 7. We have, in the second part of each of the said paper writings, marked D and E, set forth such of the said debts and claims as are wholly disputed by the said company.

8. In the said exhibits D. and E. are distinguished such of the debts, the full amounts whereof are proposed to be set apart and appropriated in such manner as the Judge shall direct.

Sworn, &c.

(a) *Supra*, p. 194.
(b) *Ib.*, p. 193.

(c) *Ib.*, p. 194.
(d) *Ib.*, p. 194.

Exhibit D, referred to in the last-mentioned Affidavit

D.

In the Matter, &c.

List of debts and claims of which the particulars have been sent in to

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by persons claiming to be creditors of the said company for larger amounts than are stated in list of creditors made out by the company. **Form 61.**

This paper writing, marked D, was produced and shown to C.D., E.F., and A.B., respectively, and is the same as is referred to in their affidavit sworn before me this day of 18 X.Y., &c.

FIRST PART.

Debts and Claims wholly or partly admitted by the Company.

Names, Addresses, and Descriptions of Creditors.	Particulars of Debt or Claim.	Amount Claimed.	Amount admitted by the Company to be owing to Creditor.	Debts proposed to be set apart and appropriated in full although disputed.

SECOND PART.

Debts and Claims wholly disputed by the Company.

Names, Addresses, and Descriptions of Claimants.	Particulars of Claim.	Amount Claimed.	Debts proposed to be set apart and appropriated in full although disputed.

Exhibit E, referred to in the last Affidavit.

E.

In the Matter, &c.

List of debts and claims of which the particulars have been sent in to Mr. by persons claiming to be creditors of the company, and to be entered on the list of the creditors made out by the company.

This paper writing, marked E, was produced and shown to C.D., E.F., and A.B., respectively, and is the same as is referred to in their affidavit, sworn before me, this day of 18 X.Y., &c.

FIRST PART.

[Same as in Exhibit D.]

SECOND PART.

[Same as in Exhibit D.]

NOTE—The names are to be inserted alphabetically.

Form 62.

Notice to
creditor to
prove debt.

No. 62. [See Rule 74 (a).]

In the Matter of The _____ Company, Limited and Reduced;
and in the Matter of "The Companies Act."

To Mr. _____

You are hereby required to come in and prove the debt claimed by you against the above company, by filing your affidavit and giving notice thereof to Mr. _____, the solicitor of the company, on or before the _____ day of _____ next; and you are to attend by your solicitor at the chambers of the Primary Judge [or Master's office], in Chancery Square, on the _____ day of _____ 18____, at _____ o'clock in the _____ noon, being the time appointed for hearing and adjudicating upon the claim, and produce any securities or documents relating to your claim.

In default of your complying with the above directions, you will [be precluded from objecting to the proposed reduction of the capital of the company], [or, in all proceedings relative to the proposed reduction of the capital of the company, be treated as a creditor for such amount only as is set against your name in the list of creditors].

Dated this _____ day of _____, 18____.

A.B.,

Solicitor for the said company.

(a) *Supra*, p. 195.

No. 63. [See Rule 79 (a)].

In the Matter of The _____ Company, Limited and Reduced;
and in the Matter of "The Companies Act, 1867" (b).

Notice is hereby given, that a petition presented to the Court, on the _____ day of _____, for confirming a resolution reducing the capital of the above company from £ _____ to £ _____, is directed to be heard before the Primary Judge in Equity, on the _____ day of _____, 18____.

C. and D. of _____ [agents for E. and F. of _____].
Solicitors for the company.

(a) *Sic.* R. 78, *supra*, p. 196.

(b) *Sic.*

FREDK. M. DARLEY, C.J.
W. C. WINDEYER, J.
M. H. STEPHEN, J.
WM. OWEN, J.
GEORGE HIBBERT DEFFELL, J.
W. J. FOSTER, J.

ADDITIONAL FORMS.

- No.
- 64 Formal parts of summons.
- 65 Formal parts of notice of motion.
- 66 Formal parts of affidavit.
- 67 Creditor's petition.
- 68 Order extending time to file affidavit in support of petition.
- 69 Order to amend petition.
- 70 Order for petition to hand over.
- 71 Order for withdrawal of petition.
- 72 Order to dismiss petition.
- 73 Affidavit of service of petition on company.
- 74 Summons to proceed on order to wind-up.
- 75 Affidavit of fitness of proposed liquidator.
- 76 Summons to settle security of official liquidator.
- 77 Summons for delivery of books.
- 78 Order for affidavit of documents and delivery to official liquidator.
- 78A Order giving the official liquidator power to act without sanction (s. 155).
- 79 Summons for leave to attend proceedings.
- 80 Order for liberty to attend proceedings.
- 81 Summons to reduce official liquidator's security.
- 82 Order to reduce official liquidator's security.
- 83 Notice of motion for substituted service.
- 84 Order for service out of jurisdiction.
- 85 Summons to strike name off list of contributories.
- 86 Summons by contributory to vary certificate by adding parties.
- 87 Order to rectify register.
- 88 Affidavit of official liquidator in support of account, and as to sureties.
- 89 Affidavit of third person in support of official liquidator's remuneration.
- 90 Affidavit of official liquidator in support of same.
- 91 Summons for payment of remuneration to official liquidator.
- 92 Order for payment of remuneration.
- 93 Affidavit of contributory in support of compromise.
- 94 Affidavit of official liquidator in support of compromise with contributory.
- 95 Order sanctioning compromise.
- 96 Order giving leave to carry on business.
- 97 Order for sale.
- 98 Claim by creditors
- 99 Summons for leave to pay dividend.
- 100 Summons to enforce payment of calls.
- 101 Order for liberty to proceed with action.
- 102 Summons to pay solicitor's costs.
- 103 Order for taxation and payment.
- 104 Petition for reduction.
- 105 Form of certificate (R. 76).
- 106 Form of order confirming reduction (R. 82).
- 107 Minute in reduction (s. 47).
- 108 Form of license to register without the word, "Limited."
- 109 Form of license to hold land (s. 55).

Form 64.

No. 64.

Formal parts of
ordinary
summons.

In the Supreme Court
of New South Wales. }
In Equity.

In the Matter of the "Companies Act" (a), and in the Matter of
the Company, Limited.

Let all parties concerned attend the Judge in chambers, on day, the
day of 189 , at o'clock in the noon, on the hearing of
an application on the part of [state on whose behalf the application is made; e.g.,
"the petitioner in these matters," or "the official liquidator of the above-named
company," or "A.B., a creditor of the above-named company"] that [state the
nature of the application] and [as to costs, e.g., "that the costs of this application
may be costs in the winding-up," or "that the official liquidator may be ordered to
pay the costs of and incidental to this application."]

Dated this day of 189 .

This summons was taken out by , of , Sydney.
solicitor for the applicant.

To [insert the names of the persons to be served].

(a) R. 1; but, *semble*, a petition for panies Act" of 1888, in matters coming
reduction of capital ought also to be under that Act.
intituled in the matter of the "Com-

No. 65.

Formal parts of
notice of
motion.

In the Supreme Court
of New South Wales. }
In Equity.

In the Matter of the "Companies Act," and in the Matter of
the Company, Limited.

Take notice that the Court will be moved before his Honour Mr. Justice
on day, the day of 189 [if the motion is to be
heard at a specially appointed hour, state the fact, as:], at eleven of the clock in
the forenoon of that day, or so soon thereafter as counsel can be heard [here
state on whose behalf the motion is to be made, as:] on the part of the official
liquidator of the above-named company that [here state the object of the motion]
[if special leave has been obtained to give the notice for a non-motion day or for a
motion day short of the ordinary two clear days after service, or for a special hour
and place, state the fact, as:] and take also notice that special leave to give this
notice for the day (and hour and place) aforesaid has been obtained from his
Honour Mr. Justice [or as the case may be].

Dated this day of 189 .

B.O., of

Solicitor for the official liquidator
of the above-named company
[or as the case may be].

To [insert the names of solicitors or parties to whom the notice is to be given].

No. 66.

Formal parts of
affidavit by one
person.

In the Supreme Court
of New South Wales. }
In Equity.

In the Matter of the "Companies Act," and in the Matter of
the Company, Limited.

I, A.B., of [place of residence and description or addition], make oath and
say as follows:—1. On the day of , 189 , I, &c. [Here set out
the statements.]

Sworn, &c.

This affidavit is filed on the part and behalf of the official liquidator of the
above-named company (or as the case may be).

Form 67.

Form 67.

In the Supreme Court of
New South Wales.
In Equity.

Creditors'
petition.

In the Matter of the "Companies Act" and in the Matter of
the Company, Limited.

To

The Honourable William Owen,
Primary Judge in Equity.

The humble petition of , carrying on business in Sydney in
co-partnership under the style or firm of ,
Sheweth,

1. The Company, Limited (hereinafter called the company).
was duly registered with articles of association on the day of
18 , under the above-mentioned Act as a company limited by shares.

2. The registered office of the company is at .

3. The principal objects for which the said company was established are as
follows:—[State the objects or principal objects set out in the memorandum of
association.]

4. The nominal capital of the company is divided into shares of
£ each. Your petitioners are ignorant as to how many of the said
shares have been subscribed for, or what amount has been called up thereon.

5. By the memorandum of association power was given to the company to
borrow and raise money for the purpose of the company's business and to make,
accept, and endorse promissory notes, bills of exchange, and other negotiable
instruments.

6. Your petitioners are merchants carrying on business at Sydney aforesaid.
On or about the day of 18 , your petitioners agreed to supply
the company with goods to the value of £ , which said goods were
subsequently delivered to and accepted by the said company [or state here the
ground on which the application is made], and for which they gave your petitioners
their promissory note in the next succeeding paragraph mentioned.

7. The said company is indebted to your petitioners in the sum of £ ,
together with interest from the day of last for that the company
on the day of 18 , by their promissory note now overdue
promised to pay to your petitioners the sum of £ after date, but did not
pay the same.

8. On the day of last your petitioners caused to be served
on the said company by sending the same in a pre-paid registered letter through
the General Post Office addressed to the company's registered office a demand
requiring the company to pay the said sum of £ , together with interest
accrued thereon.

9. The said company has for the space of three weeks neglected to pay the
said sum, or to secure or to compound for the same to the reasonable satisfaction
of your petitioners, and the said sum is still due and unpaid.

Your petitioners submit that the said company is unable to pay its debts, and
that it is just and equitable that it should be wound-up by the Court.

Your petitioners therefore humbly pray as follows:—

1. That the Company, Limited, may be wound-up by this
Honourable Court under the provisions of the "Companies Act," and
that for such purpose all necessary and proper directions may be
given.

2. That A.B. and C.D., both of Sydney, be appointed official liquidators of
the said company.

3. That such further or other order may be made in the premises as shall
seem meet.

And your petitioners will ever pray, &c.

Dated the day of 18 .

[Signature.]

NOTE.—It is intended to serve this petition on the Company, Limited.
This petition is filed by of street, Sydney, solicitor for the
petitioners.

Form 68.

No. 68.

[Title. *Formal parts, No. 3.*]

Order extending time to file affidavit.

Upon motion, &c., for A., who alleged that the said A., on day of , 189 , presented his petition in these matters to this Court, but omitted to file his affidavit in support of such petition within the time limited in that behalf by the rules of this Court, and upon reading an affidavit of R.L., filed the day of , 189 . Order that the said A. be at liberty to file his affidavit in support of the said petition notwithstanding the time limited for that purpose has expired.

No. 69.

[Title. *Formal parts, No. 3.*]

Order giving liberty to amend petition.

Upon motion, &c. Order that the petitioner be at liberty to amend the said petition as he may be advised. And order that the said petitioner do have four days from the date of this order within which to file his affidavit verifying the statements in the amended petition.

No. 70.

[Title. *Formal parts, No. 3.*]

Order to stand over.

The petition of, &c., preferred unto the Primary Judge in Equity, coming on this day to be heard, and upon hearing counsel for, &c., opposing the said petition, and the company, by their counsel, undertaking not to consent to a winding-up order, or any other petition, and not to wind-up voluntarily, and to give notice to the petitioner of any other petition for winding-up the company which may be served upon them, and in the event of any such other petition being served upon them, to consent to the petition being restored to the paper, and that the application for a winding-up order by it may be renewed in the same manner as if the petition had not been ordered to stand over. Order that the petition do stand over [*for six months*].

No. 71.

[Title. *Formal parts, No. 3.*]

Order giving liberty to withdraw.

Upon the petition of , preferred unto, &c., praying that the company might be wound-up under the provisions of the above-mentioned Act, and the petitioners not wishing to proceed with the said petition, and the company waiving all costs: this Court doth order that the petitioners be at liberty to withdraw the said petition.

No. 72.

[Title. *Formal parts, No. 3.*]

Order on motion dismissing where debt disputed.

Upon the petition, &c. Order that the said petition stand dismissed with costs, to be taxed by the chief clerk and paid by the petitioners to the company.

No. 73.

[Formal parts, No. 66.]

Affidavit of service of petition.

On the day of , I served the above-named company with a petition preferred in this matter by , of , to this Honourable Court, with the order thereon of this Court, dated the day of , whereby it was ordered that all parties concerned should attend thereon, on the day of , and that notice thereof should be given forthwith, by delivering a true copy of the said petition and order to , at the registered office of the company, at , and at the same time producing and showing the said the said original petition with the said order thereon.

Sworn, &c.

[Conclude as in Form No. 66.]

ADDITIONAL FORMS.

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No. 74.

Form 78.

[Formal parts, No. 64.]

On the hearing of and application on the part of A.B., the petitioner in these matters (or, the person having the conduct of the order), to proceed on the order to wind-up the above-mentioned company, dated the day of , 189 .
Dated this day of , 189 . [Conclude as in Form No. 64.]

Summons to
proceed on
order to wind-
up.

No. 75.

[Formal parts, No. 66.]

I, &c., &c., make oath and say as follows :—
1. I know and am well acquainted with A.B., of , in the , of , and have been acquainted with him for years and upwards.
2. The said A.B. is [set out circumstances showing capabilities], and has been a member of the firm of for the period of .
3. The said A.B. is a person of thorough business habits and capabilities, and of the highest integrity, and he is a fit and proper person to be appointed official liquidator of the above-mentioned Company, Limited, to conduct the proceedings in the winding-up of the same.

Affidavit of
fitness of pro-
posed liqui-
dator.

Sworn, &c.

[Conclude as in No. 66.]

No. 76.

[Formal parts, No. 64.]

On the part of the official liquidator of the above-named company to settle the security to be given by him in pursuance of the order in these matters, made the day of , 189 . [Conclude as in No. 64.]

Summons to
settle security
of official
liquidator.

No. 77.

[Formal parts, No. 64.]

On the part of the official liquidator of the above-named company, that Messrs. , the former solicitors of the said company, may be ordered upon oath, if required, to deliver up to the applicant all deeds, books, papers, and writings in their possession, custody, or power, belonging to the above-named company. [Conclude as in No. 64.]

Summons to
compel delivery
of company's
books and
papers.

No. 78.

[Title. Formal parts, No. 3.]

Upon the application of A.B., the official liquidator of the above-named company, and upon hearing the solicitors for the applicant, and for : Order that the said do within days after the service of this order upon him, make and file a full and sufficient affidavit, stating whether he has or has had in his possession, custody or power, any, and [if any] what books, papers, or documents in his possession, custody, or power relating to the matters in question in this matter, and accounting for the same. And order that the said do at all reasonable times, and upon reasonable notice, produce at the office of Mr. , his solicitor, situate at, &c., the documents which by such affidavit shall appear to be in his possession, custody, or power, except such of the same [if any] as he may by such affidavit object to produce; and order that the applicant, his solicitor and agents, may be at liberty to inspect and peruse the documents so produced, and take copies and abstracts thereof, and extracts therefrom as the applicant shall be advised, at his expense; and that the said documents may be produced upon any examination of witnesses; in these matters, and at the hearing of as the applicant shall require, and that the applicant may be at liberty to make such further applications as to all or any documents mentioned in such affidavit as he may be advised.

Order for
affidavit of
documents and
delivery to
official liqui-
dator.

Form 78a.

Order giving the official liquidator power to do all acts required to be done without the previous sanction or interference of the Court. [s. 155, *supra*, p. 77.]

Summons for leave to attend the proceedings.

And his Honour doth hereby appoint _____ official liquidator of the above-named company without giving security. And his Honour doth declare that all the acts required or authorised by the above statute to be done by the official liquidator may be done by the official liquidator hereby appointed without the previous sanction or interference of this Court.

No. 78 (A).

[Title. Formal parts, No 3.]

No. 79.

[Formal parts, No. 64.]

On the application of A.B., of, &c. [a contributory or creditor, &c., as the case may be], that he may be at liberty to attend the proceedings under the order to wind-up the above-mentioned company, dated the _____ day of _____, 199____, and that the costs of this application and of attending the said proceedings may be borne as this Court may direct.

Dated, &c. [Conclude as in No. 64].

No. 80.

[Title. Formal parts, No. 3.]

Liberty to contributory to attend.

Upon the application of W., of _____, a contributory, &c. Order that the said W. be at liberty, at his own expense, to attend all subsequent proceedings in these matters. And order that the said W., upon payment of the costs occasioned thereby, have notice of all such proceedings as he shall, by written request, desire to have notice of.

No. 81.

[Formal parts, No. 64.]

Summons to reduce security.

On the part of the official liquidator of the above-named company that the security given by him and his sureties, J. & K., in these matters by the recognizance entered into by them for _____, and dated, &c., may be reduced to the sum of _____

[Conclude as in No. 64.]

No. 82.

[Title. Formal parts, No. 3.]

Order reducing security.

Upon the application of M., the official, &c. Order that the security given by the official liquidator in these matters be reduced as from the date of this order to the sum of _____, and that the said bond of the said M., and the _____ Company, Limited, as from the date of this order, stand as a security for the sum of _____ only, instead of the sum of _____, in respect of any sum or sums of money to be received by the said official liquidator after the date of this order, but subject and without prejudice to the liability of the said M.; and the said company, or either of them, under the said bond, in respect of any sum or sums of money received by the said M., or otherwise, prior to the date of this order.

No. 83.

[Formal parts, No. 65.]

Motion for substituted service.

That service of an order made by [Judge] in these matters on the _____ day of _____, and of a copy of the order on this application on _____ at _____ and on the solicitors of the said _____, at _____ [_____] may be deemed good and sufficient service upon the said _____

ADDITIONAL FORMS.

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No. 84.

Form 88.

[Title. Formal parts, No. 3.]

Upon the application of _____, the liquidator of the company, &c. Order that service of any summons, order, notice, or other proceeding in these matters not requiring personal service upon such of the contributories or creditors of the said company whose usual or last known place of abode is situate in Victoria, &c., or elsewhere, out of the jurisdiction of this Honourable Court, and on whose behalf no appearance has been entered, in pursuance of the general rules of this Honourable Court, be effected by enclosing a true copy of the summons, order, notice, or other proceedings, together with a copy of this order in an envelope duly addressed to such persons respectively, to their several last known addresses, or place of abode, and posting the same at the General Post Office, Sydney.

General order for service out of jurisdiction.

No. 85.

[Formal parts, No. 64.]

On the hearing of an application on the part of A.B., of, &c., that the name of the said A.B. may be struck off the list of contributories of the said company, as a contributory in respect of _____ shares, and that the costs of this application may be paid by the official liquidator of the said company. Summons to strike name off list of contributories.

Dated, &c. [Conclude as in No. 64.]

No. 86.

[Formal parts, No. 64.]

That the certificate of the Master in Equity, dated the _____ day of _____, of the result of the settlement of the list of contributories of the said company may be varied by placing C.D., of &c., upon such list as a member in class [_____] in respect of _____ shares in the place and stead of A.B., whose name now appears upon the said list as a contributory in respect of such shares, and that such consequential directions may be given, and alterations or directions made in the said certificate as may be necessary, and that the costs, &c. [as in No. 85.]

[Conclude as in No. 64.]

No. 87.

[Title. Formal parts, No. 3.]

Upon motion, &c., for &c., It is ordered that the Register of Shareholders of the said company be rectified by striking out the name of the said A.B. therefrom as the holder of the _____ shares numbered _____ to _____ inclusive. And it is further ordered that notice of this order be given to the Registrar of Joint Stock Companies by the said _____, and it is ordered that the costs of the said _____ be taxed by the chief clerk, and paid by the said company to the said _____.

Order to rectify register.

No. 88.

[Formal parts, No. 66.]

I, _____ of _____, chartered accountant, the official liquidator of the above-named company, make oath and say as follows:—

1. The accounts contained from page _____ to page _____, both inclusive, in each of the two several books marked in several letters _____, produced and shown to me at the time of swearing this, my affidavit, and purporting to be my [here state first or second, as the case may be] account as official liquidator for the above-named company, from the _____ day of _____ to the _____ day of _____, both inclusive, doth contain a true account of all and every sum and sums of money received by me or any other person or persons by my order or to my knowledge or

Affidavit of official liquidator in support of his account and as to securities.

Form 89.

belief for my use on account or in respect of the said company other than and except what is included as received in my former accounts sworn to by me.

2. The several sums of money mentioned in the said account hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained to the best of my knowledge and belief.

4. and , who are sureties for me as such official liquidator, are respectively living and are respectively resident in New South Wales, that is to say, the said at , and the said at , and they have not, nor has either of them, been adjudged bankrupt, nor have any proceedings been taken for the liquidation by arrangement of the affairs of them, or of either of them, or for the payment of a composition upon the debts and liabilities owing by them, or either of them.

Sworn, &c.

Filed on the part of the official liquidator.

[Conclude as in Form No. 66.]

No. 89.

[Formal parts, No. 66.]

Affidavit of
third person in
support of
official liqui-
dator's remun-
eration
account.

I, , of , clerk to , the official liquidator of the above-named company, make oath and say as follows:—

1. It has been and is the rule and practice in the office of the said official liquidator for all persons engaged upon the affairs of the said company [including the said official liquidator himself] to enter into diaries the particulars of all work done by them in respect of the company, and the time occupied in doing the work, and for such entries to be made on the day the work is done, or on any day following, and the paper writing now produced and shown to me marked contains, to the best of my belief, a true statement of the time devoted by the said official liquidator and his clerks to the affairs of the said company, between the day of and the day of .

In such statement the days on which work was done in respect of the company are set forth in the column, and opposite to the date the particulars of the time occupied in doing the work are set forth in the remaining columns. As to the time of the official liquidator in the and columns. As to the time of the 1st class clerks in the and columns. As to the time of the 2nd class clerks in the column. And as to the time of the 3rd class clerks in the column. The said statement is divided into two parts. Part 1 comprises time employed in attending in Court or at the Master's office; part 2 comprises all other time, but does not comprise any time in attending in Court or at the Master's office.

2. I say that the said statement corresponds in all its particulars with the entries made by the said official liquidator and his clerks in their diaries, according to the rule and practice hereinbefore mentioned, as I know from having compared the statement with the said diaries.

Sworn, &c.

[Conclude as in Form No. 66.]

No. 90.

[Formal parts, No. 66.]

Affidavit of
official liquida-
tor in support of
his remunera-
tion account.

I, , of , chartered accountant, the official liquidator of the above-named company, make oath and say as follows:—I have read the affidavit of , sworn the day of , and I say that the statements contained in such affidavits as to the rule and practice of my office are true.

1. The paper writing marked , now produced and shown to me (being the exhibit referred to in the said affidavit), contains a true and correct statement of the time devoted by me and my clerks to the affairs of the above-named company, between the day of . The whole of such time has

been necessarily and diligently employed upon the affairs of the company, and no part of the same has been or will be charged to any other company or person. Form 94.

2. The whole of the time appearing by the said statement to have been devoted by me personally to the affairs of the company was employed upon matters proper to engage my attention, and which could not properly be entrusted to clerks, and the whole of the time appearing to have been devoted by such class of clerks was employed upon matters proper to receive attention of such clerks, and which ought not to have been entrusted to clerks of any other class.

Sworn, &c.

[Conclude as in No. 66.]

No. 91.

[Formal parts, No. 64.]

On the part of the official liquidator of the above-named company, that he may be at liberty to retain and pay himself out of the assets of the company, the sum of _____ on account of his remuneration as such official liquidator. Summons by official liquidator for liberty to retain money on account of remuneration.

[Conclude as in No. 64.]

No. 92.

[Title. Formal parts, No. 3.]

Upon the application of J., the official liquidator, &c. Order that out of the sum of _____, standing in the books of the Bank of _____, to the credit of the official liquidator of the said company, the sum of _____, being the ascertained amount of the said official liquidator's remuneration, be paid to the said J., as such official liquidator. Order for payment of official liquidator's remuneration.

And [tax liquidator's costs].

No. 93.

[Formal parts, No. 66.]

1. I have been settled on the list of contributories of the above-named company in respect of _____ shares, and a call has been made on me of £ _____. Affidavit of contributory in support of compromise.

2. I have no property, real or personal, of any kind soever, and I am not entitled either in possession, reversion, or expectancy, or otherwise, to any interest in any property, save and except [here set out property or make the statement of the particulars of property an exhibit to the affidavit.]

3. [Here set out amount of, and how income is derived, and any other matters tending to show the position of the deponent, and inability to pay.]

4. I owe for, &c.

5. I have not made away with, encumbered, or charged, settled, or in any manner parted with any of my property or effects since the _____ day of [the date of the liquidation of the company], save and except [here set out exceptions].

6. The paper writing now produced and shown to me, marked A, contains a true and just account of all receipts and payments made to and by me from _____ day of _____ to _____ day of [date of winding-up].

7. Under these circumstances I [here state proposals of compromise].

[Conclude as in Form No. 66.]

No. 94.

[Formal parts, No. 66.]

I _____, of _____, chartered accountant, the official liquidator of the above-named company, make oath and say as follows:—1. By an order dated _____ day of _____, [name], one of the directors of the said company was ordered to pay me the sum of £ _____, and by another order dated the _____ day of _____ [name], was ordered to pay me the sum of £ _____. Affidavit of official liquidator as to a compromise.

Form 95. being the sums for which such persons respectively are liable in respect of
[state particulars.]

2. Such orders were personally served on the said and respectively, and pressure was put upon such persons to induce them to comply with such orders. I and my solicitors have made inquiries as to the means of the said persons, and having regard to the result of such inquiries, I say that it is, in my opinion, desirable, in the interests of the creditors of the said company, to accept from the said and respectively the sums of £ and £ , in full discharge of their liability. I believe that if such orders were enforced by execution, or otherwise, or expense incurred in bankruptcy proceedings against such person, so large amount would not be recovered.

Sworn, &c. [Conclude as in Form No. 66.]

No. 95.

[Title. Formal parts, No. 3.]

Order sanction-
ing agreement
for compro-
mise.

Upon the application of the official liquidator, &c. Order that the agreement for compromise, dated, &c., and made, &c., be sanctioned.

No. 96.

[Title. Formal parts, No. 3.]

Order.
Liberty to carry
on business
[qualified].

Upon the application of the liquidators. Order that the liquidators be at liberty until further order, to carry on the business of the said company so far as may be necessary to complete contracts to an extent not exceeding what may be necessary to sell the land, buildings, and business of the said company as a going concern, and to use up the stocks of iron and other materials, whether manufactured or not, in the liquidators' possession, but so that the price for such further contracts, with the exception of the one specified under letter G in the second schedule of the said affidavit, shall not exceed , and so that any such further contracts shall not take more than six months to complete.

No. 97.

[Title. Formal parts, No. 3.]

Order for sale.

Upon the application of the official liquidator of the above-named company, &c. Order that of the property of the company in , the following be sold, with the approbation of the Judge, namely, (1) The, &c.; (2) The, &c., (3 & 4). And order that the money to arise by such sale be paid into the Bank to the credit of the official liquidator, to an account to be entitled, "Proceeds of the sale of property sold in the year ."

No. 98.

Claim by
creditors.

Sir, I , of , claim as a debt from the above-named company the sum of , of which debt, or claim, the following are the particulars [set out, or refer to an enclosure containing particulars]: e.g., amount of bill of exchange, dated, &c., drawn by me upon and accepted by the said company, payable the day of , which bill was dishonoured at maturity. Interest thereon at the rate of five per cent. per annum, as from the said day of until payment. The only security I hold for the debt so due to me, or any part thereof, is [state nature of security, if any; e.g.: is the said bill of exchange, or, and I do not hold any security whatsoever for the debt so due to me, or any part thereof.]

My solicitor is Mr. , of [address.]

To , the official liquidator of the above-named company. [Signature of creditor and date.]

No. 99.

Form 103.

[Formal parts, No. 64.]

On the part of the official liquidator of the above-named company, that he may be at liberty to pay, out of the assets of the above company, to the several persons named in the first column to the Master's Certificate, made herein on the day of , a dividend of ten shillings in the pound, upon the several amounts of their debts, as certified by such certificate, and that the said official liquidator be allowed such payments in passing his accounts.
[Conclude as in Form No. 64.]

Summons for liberty to pay dividend to creditors.

No. 100.

[Formal parts, No. 64.]

On the part of , of , the official liquidator of the above-named company, that the several persons named in the second column of the schedule to this summons, being respectively contributories of the above-named company, may be ordered on or before the day of , or within four days after the service of the order to be made hereon, to pay into the Bank of , to the account of the official liquidator of the said company, or, in the alternative, to the said official liquidator, at his office at , the several sums set opposite their respective names in the sixth column of said schedule hereto, such sums being the amounts due from the said several persons respectively, in respect of the call of per share, made by the order dated the day of [if interest claimed, add words accordingly], and that the costs of the applicant, of and incidental to this application, may be costs in winding-up [or, that the said several persons may be ordered to pay to the applicant the costs of and incidental to this application].

Summons to enforce payment of calls.

No. 101.

[Title. Formal parts, No. 3].

Upon the application of B., the plaintiff in an action against the company, and J.W., and upon hearing the solicitors for the applicant and for the official liquidator of company, and upon reading the winding-up order. Order that the applicant to be at liberty to proceed with the said action, the said applicant undertaking not to take any steps to enforce any judgment he may obtain against the said company therein without obtaining the previous leave of [the Judge by whom the winding-up order was made], the cost of the official liquidator, of and incidental to this application, to be costs in winding-up.

Order giving liberty to proceed with action.

No. 102.

[Formal parts, No. 64.]

On the part of A.B., the official liquidator of the above-named company, that out of the assets of the said company he may be at liberty to pay £ on account of the costs of Messrs. C.D., his solicitors in these matters.
(Conclude as in Form No. 64.)

Summons to pay solicitor's costs.

No. 103.

[Title. Formal parts, No. 3.]

Upon the application of the official liquidator of the said company, and upon hearing the solicitor for the applicant, and upon reading [enter evidence]. Refer it to the chief clerk to tax the applicant's costs, charges, and expenses incurred by him in these matters as such official liquidator as between solicitor and client from the to , including therein the costs of this order. And it is ordered that such costs, charges, and expenses, when taxed, be allowed and paid out of the assets of the said company as and when the Judge gives directions for that purpose [or, be retained by the official liquidator out of the estate of the said company].

Order of taxation and payment of costs.

Form 104.

No. 104.

Petition for
reduction.In the Supreme Court }
of New South Wales. }
In Equity.In the Matter of the "Companies Acts" of 1874 and 1888; and in
the Matter of The Company, Limited and Reduced.

To the Honourable William Owen, Primary Judge in Equity.

The humble petition of The Company, Limited and Reduced, sheweth
as follows:—

1. Your petitioner the above-named company (hereinafter called the company) was incorporated on the day of , in the year 189 , under the "Companies Act of 1874," as a company limited by shares.

2. The registered office is situated at No. street, Sydney, New South Wales.

3. The objects for which the company was established are [*to manufacture rolling stock*], and other objects set forth in the memorandum of association thereof.

4. The capital of the company was originally £100,000 divided into 100,000 shares of £1 each.

5. Shortly after the incorporation of the company it commenced and has since carried on business.

6. The whole of the original shares of the said company were issued, and the total amount of £1 due thereon has been paid.

7. There was no provision made by the original articles of association of the said company for the reduction of the capital of the company, but the said articles were amended by a special resolution duly passed and confirmed, whereby it was resolved that the following clause be added to the articles, viz.:—"The company may, from time to time, by special resolution, reduce its capital in any manner permitted by law."

8. At an extraordinary general meeting of the company held on the day of , 189 , in pursuance of the said amended articles, by special resolution it was resolved that "the capital of the company be reduced from £100,000, divided into 100,000 shares of £1 each, fully paid-up, to £75,000, divided into 75,000 shares of £1 each, fully paid-up, and which resolution was subsequently confirmed at an extraordinary general meeting of the company, held on the day of , 189 .

9. By an order of this Honourable Court, dated the day of , and made by your Honour, the said reduction of capital was confirmed, and the said order and a minute to that effect approved by this Court were duly registered by the Registrar of Joint Stock Companies.

10. At an extraordinary general meeting of the company, held on the day of , in pursuance of the said amended articles, by special resolution it was resolved, "That the capital of the company, which now stands at £75,000, divided into 75,000 shares of £1 each, fully paid-up, be reduced to £60,000, divided into 75,000 shares of 16 shillings each, fully paid-up, and that such reduction be effected by cancelling the present paid-up capital to the extent of 4 shillings per share, the liability in respect to which said 4 shillings per share shall be extinguished, which resolution was subsequently confirmed at another extraordinary general meeting of the company, held on the day of , 18 .

11. Previously to the passing of such last-mentioned special resolution, capital of the company to the extent of fifteen thousand pounds (£15,000) and upwards was unrepresented by available assets.

12. The reduction of the capital aforesaid did not, and does not now, involve either the diminution of any liability in respect of unpaid capital, all the shares to be reduced being fully paid-up, or the payment to any shareholder of any paid-up capital.

13. The form of minute proposed to be registered is as follows:—Minute approved by the Court. The capital of Company, Limited, is from henceforth £60,000, divided into 75,000 shares of 16 shillings each, on which the sum of 16 shillings has been and is to be deemed paid-up instead of the previously reduced capital of £75,000, divided into 75,000 shares of £1 each, with £1 per share paid-up.

Form 105.

Your petitioner the company therefore humbly prays :—

1. That the last-mentioned specified resolution, reducing the capital of the company, passed and confirmed as aforesaid, may be confirmed by this Honourable Court, and that the above-mentioned minute may be approved by the Court.

2. That the addition of the words, "and Reduced," may be dispensed with.

3. That directions may be given in what manner notice of the registration of the order and of the minute may be published (a).

4. Or that such other order may be made in the premises as to this Honourable Court shall seem meet.

And your petitioner the company will ever pray, &c.

Dated at Sydney this day of in the year
 Secretary of the Petitioning Company.
 Solicitors for the Petitioning Company.
 Counsel for the Petitioning Company.

Note.—It is not intended to serve this petition on any person.

(a) See note to s. 47.

No. 105.

Certificate of Master in Equity of settlement of list of creditors. [Rule 76.]

In the Matter, &c.

In pursuance of the directions given to me by the Primary Judge in Equity, I hereby certify that the result of the settlement of the list of creditors made out by me this day pursuant to the above statute and the general order of the Court in that behalf, is as follows :—

1. The several persons whose names are set forth in the first column of the first schedule hereto are creditors who have consented in writing to the proposed reduction, and the total amount of the debts due to them is £

2. The several persons whose names are set forth in the first column of the second schedule hereto are creditors whose debts have been secured in manner provided by the 46th section of the said Act, and the total amount of the debts due to them is £

3. The several persons whose names are set forth in the first column of the third schedule hereto are alleged creditors whose debts have been disallowed; and the amount of their debts which has been so disallowed is set opposite their names in the said schedule.

4. The several persons whose names are set forth in the first column of the fourth schedule hereto are creditors the amount of whose debts (which are severally set opposite the names of each of them) have been fixed by inquiry and adjudication in manner by the said Act provided.

5. The several persons whose names are set forth in the first column of the fifth schedule hereto are creditors the full amount of whose claims is not admitted by the company, and whose claims the company are not willing to set apart and appropriate funds to meet, and the amount of which claims has not been fixed by inquiry and adjudication; and the amount of their claims is set opposite their names in the said schedule.

THE FIRST SCHEDULE.

Creditors who consent.

Name.	Address.	Description.

ADDITIONAL FORMS.

Form 106.**THE SECOND SCHEDULE.**

Creditors whose debts have been secured.

Name.	Address.	Description.

THE THIRD SCHEDULE.

Creditors whose claims have been disallowed.

Name.	Address.	Description.	Amount of Debt.

THE FOURTH SCHEDULE.

Creditors whose debts have been fixed by inquiry.

Name.	Address.	Description.	Amount.

THE FIFTH SCHEDULE.

Creditors whose claims are not admitted by the company, and have not been fixed by inquiry.

Name.	Address.	Description.	Amount.

No. 106.

In the Supreme Court of
New South Wales.
In Equity.

Order confirm-
ing reduction.

In the Matter of the "Companies Acts" of 1874 and 1888, and in the
Matter of the Company, Limited and Reduced.
Upon the petition of the Company, Limited and Reduced, filed

herein on the _____ day of _____ last past coming on for hearing this day **Form 108.**
before the Honourable William Owen, Primary Judge in Equity of this Court,
and upon hearing _____, of counsel for the petitioning company, and upon
reading the said petition and the affidavit of _____ sworn and filed on
the _____ day of _____ last past, and his Honour not requiring any notice to
creditors or advertisement of any notice that the petition was appointed to be
heard this day. This Court doth order that the cancellation and reduction of
the capital of the company resolved on and effected by the special resolution
passed and confirmed at the extraordinary general meetings of the company
held respectively on the _____ day of _____ and the _____ day of _____,
last past, which resolution was in the words and figures following:—

"That the capital of the company, which now stands at £75,000, divided
into 75,000 shares of £1 each, fully paid-up, be reduced to £60,000, divided into
75,000 shares of 16 shillings each, fully paid-up, and that such reduction
be effected by cancelling the present paid-up capital to the extent of
4 shillings per share, the liability in respect of which 4 shillings per share
shall be extinguished, be and the same is hereby confirmed. And it is ordered
that the addition of the words 'and reduced' to the title of the said company be
hereby altogether dispensed with. And it is further ordered that notice of the
registration of this order and of the said minute be published, &c. And the
Court doth hereby approve of the minute set forth in the schedule hereto.
And it is ordered that this order be produced to the Registrar of Joint Stock
Companies, and that an office copy thereof be delivered to him, together with
the said minute in the words and figures or to the effect set forth in the
schedule hereto.

THE SCHEDULE.

The capital of the _____ Company, Limited, is from henceforth £60,000.
divided into 75,000 shares of 16 shillings each, on which the sum of 16 shillings
has been and is to be deemed paid-up instead of the previously reduced capital
of £75,000, divided into 75,000 shares of £1 each, with £1 per share paid-up.

No. 107.

The capital of the West Cumberland Iron and Steel Company, Limited and **Form of minute**
Reduced, is from henceforth £360,000, divided into 24,000 shares of £15 each, on **to be registered,**
which the sum of £14 has been and is to be deemed paid-up, instead of the **s. 47, "Compa-**
original capital of £600,000, divided into 24,000 shares of £25, with £24 per share **nies Act," and**
paid-up. [W.N. (1888) 54.] **s. 4, Act of 18 88**

No. 108.

New South Wales, }
(To wit).

Whereas, it has been proved to the Governor and Executive Council that the **Form of license**
Company, which is about to be registered under the "Companies Acts" **to register**
of 1874 and 1888, as an association limited by [guarantee or shares] is formed for **without the**
the purpose of promoting objects of the nature contemplated by the 54th section of **word "limited."**
the first-mentioned Act, and that it is the intention of the said association that the
income and property of the association whencesoever derived, shall be applied solely
towards the promotion of the objects of the association as set forth in the
memorandum of association, and that no portion thereof shall be paid or transferred
directly or indirectly by way of dividend, bonus, or otherwise howsoever by way of
profit to the persons who at any time are or shall be, or have been members of the
association, or to any of them, or to any persons claiming through any of them.
Now, therefore, the Governor, by and with the advice of the Executive Council, in
pursuance of the powers vested in him by the said section 54 of the "Companies
Act" of 1874, and of any other powers thereunto enabling him, and in consideration
of the provisions and subject to the conditions contained in the memorandum of
association, a copy of which verified by the signature of [a director of the company]

ADDITIONAL FORMS.

Form 109. have been produced, doth by this license direct the Company to be registered
with limited liability without the addition of the word "Limited" to the name.
Signed this day of , A.D.

Colonial Secretary.

No. 109.

New South Wales, }
(To wit). }

Form of license
to hold more
than two acres
of land.

Whereas, the Company, Limited, being an association formed under the
provisions of the "Companies Act" for the purpose of promoting [art, or commerce],
and not for any purpose involving the acquisition of gain by the company or by the
individual members thereof, has applied to the Governor and the Executive Council
for power to hold certain land, being more than two acres in extent. Now, there-
fore, the Governor, by and with the advice of the Executive Council, doth hereby,
in pursuance of the powers vested in him by the 55th section of the said Act, and of all
other powers enabling him, license and empower the said Company, Limited,
to hold the lands which are described as follows [*here insert description of lands*],
and subject to the conditions following [*here insert conditions, if any*].

Signed this day of , A.D.

Colonial Secretary.

CHAPTERS.

I.—FORMATION OF A COMPANY.

[References, except where otherwise expressed, are to the Sections of the "Companies Act, 1874," and to the Rules of Court thereunder of March, 1889]

Companies formed under the "Companies Act" may be either limited or unlimited; and of the former, companies may be limited either by shares or by guarantee. Very few cases of unlimited companies occur; of limited companies those limited by shares are much the more common.

It is proposed to treat very shortly of the necessary steps in the formation of a company limited by shares, noticing any differences in the case of companies limited by guarantee. The limitation, it may be observed, is of the liability of the individual members of the company, which, in the case of a company limited by shares, is limited to the amount unpaid on the members' shares, and in the case of a company limited by guarantee to the amount which each member undertakes to contribute to the assets of the company in the event of its being wound-up: ss. 7, 8.

The number of persons forming a company cannot be less than seven (s. 5); but any seven persons may combine to form a company for any lawful purpose (*ib.*). Such a purpose is commonly the entering into, acquiring, or carrying on some business, and if, as is usually the case, the public is to be invited to take shares in the proposed company, one of the first steps taken by the persons interested in the formation of the company will probably be the publication of a prospectus, that is to say, a statement of the intention to form a company, the amount of share capital with which it is to be registered, the objects for which it is to be formed, the names of persons acting in the formation of the company as directors, brokers, &c., together with such information as may appear useful to the

Limited or unlimited.

Limited by shares or by guarantee, ss. 7, 8.

Seven persons, s. 5.

Prospectus.

Chap. I. public in leading them to decide whether or no to apply for shares. The prospectus is commonly issued before the registration of the company; but it is the better course, if seven persons can be found to sign a memorandum of association, to register the company first and to take all subsequent steps in the name of the company; see as to this, *infra*.

The prospectus may be in form something as follows:—

Form of
prospectus.

The ——— Company, Limited.

Incorporated under the provisions of the “Companies Acts, 1874 and 1888,” whereby the liability of a shareholder is limited to the amount of his shares.

Capital, £100,000, divided into 100,000 shares of £1 each, payable as follows:—2s. 6d. on application, 2s. 6d. on allotment, the balance when called for.

Directors :

Bankers :

Solicitor :

Secretary :

Brokers :

The company is formed for the purpose, &c.

[Here set out a statement of the objects and prospects of the company.]

Application for shares may be in the accompanying form, and should be forwarded to the secretary, together with the amount payable on application.

Business will be commenced when half the shares have been subscribed.

The following contracts have been made, namely:—

1. A contract, dated _____, between A.B. and C.D. as a trustee for the company.

2. (Other contracts).

Forms of application for shares may be obtained from the secretary.

Copies of the contracts above mentioned and of the memorandum and articles of association may be inspected at the office of the company's solicitors.

Dated the _____ day of _____ A.D. 18 ____ .

A form of application for shares may be as follows :—

Chap. I.

Form of Application for Shares.

Application form.

To the Directors of the ——— Co., Ltd.

Gentlemen,—

I hereby request that you will allot me shares in the Co., Ltd., and now enclose my cheque for £ , being 2s. 6d. per share on the number applied for, and I hereby agree to accept the same or any smaller number that may be allotted to me, and to pay the balance of 2s. 6d. per share on allotment as provided in the prospectus, and I authorise you to register me as the holder of the said shares.

Name.

Address.

Description.

Date.

The objects for which the company is to be formed should be accurately stated ; if it afterwards appear that its objects as set out in the memorandum of association differ from those stated in the prospectus, an applicant for shares on the faith of the prospectus will be entitled to decline to take shares in a company registered with different objects.

Objects of company.

All material facts relating to the intended company, its position and prospects should be stated. Misstatements or concealment of material facts will entitle an applicant for shares to refuse to carry out his contract to take shares, or to have the contract rescinded and his name removed from the list of shareholders, if shares have actually been allotted to him. And the persons whose names appear on the prospectus, if they have in fact authorised its publication, will be personally liable in damages for any statements appearing in the prospectus which they do not *bona fide* believe to be true. There must be actual fraud shown on the part of the person charged ; but he is liable, and actual fraud appears, not only when he makes a statement which is false, and known by him to be so, but also when such a statement is made recklessly and without care whether it be true or false. It is not every person who has seen the false statements and bought shares who has any ground of action, but only

Misstatements, ground for rescission.

Personal liability of directors, &c., for fraud.

Derry v. Peek, 14 App. Cas. 337.

Chap. I. a person who has taken his shares relying on the misleading statements in the prospectus.

Contracts to be stated, s. 69.

Further, by s. 69, *q.v.*, every prospectus of a company shall specify the dates and names of the parties to any contract entered into by the company or the promoters, directors, or trustees thereof before the issue of such prospectus, whether subject to adoption by the directors of the company or otherwise. It is obviously impossible to carry out the requirements of this comprehensive enactment to the letter; and as to what contracts ought to be disclosed, see note to s. 69, *supra*; but if there be any doubt whether a contract should be disclosed or not, it is better to err on the side of disclosing too much rather than too little.

Registration should precede prospectus.

It is a very usual practice for the promoters to issue the prospectus before the formation of the company, and to invite applications to provisional directors, and only to register the company after a certain number of applications have been sent in. But this practice gives rise to very difficult questions; and inasmuch as it is not now a very expensive matter to register a company (see "Companies Act," Sch. I., Table B.), and for the avoidance of such questions, it appears the far preferable course (as has been suggested *supra*) to register at the same time as or before the issue of the prospectus, seven members signing the memorandum for one share each (ss. 5, 7), and it should be declared by an article similar to Art. 53, Table A., that the subscribers of the memorandum are to be the first directors, and thereupon they will be able to exercise all the powers conferred by the articles on the directors, and to act generally in the name of, and by their acts to bind, the company.*

Application.

It should not be forgotten that under s. 21 agreement is made the basis of membership in a company; the question in a case of dispute is, "Has there been a complete agreement to take shares?" The agreement is usually constituted by application, as in the form above given, followed by a letter of allotment, upon which there appears a complete contract. There must be

* See *In re Great Northern Salt Co.*, W.N. (1890) 19, on the powers of the subscribers of the memorandum.

an allotment, and until that allotment is communicated to the applicant he may withdraw his application†; but the contract is complete when the letter of allotment is posted, although it is never received. The withdrawal may be oral merely, or may be inferred from inconsistent acts, known to the other party, without express words. The application may be conditional on the applicant, *a.g.*, receiving contracts from the company; if shares be allotted on such application, the question will be whether the condition was precedent or only collateral, whether acceptance of shares was only to take effect on the fulfilment of the condition, or whether there was on the other hand a present complete agreement to take shares with a collateral agreement for something else to be done.

Chap. I.

Household Fire Insurance Co. v. Grant (1879), 4 Ex Div. 216.

Conditional :

An application coupled with some condition that is not accepted by the company clearly constitutes no agreement. The application may be made by an agent; but if the agent apply in his own name, he may make himself personally liable.

by agent.

Before considering the memorandum, it may be observed that a company or its promoters—that is, the persons engaged in its formation—frequently enter into preliminary agreements with other persons for acquiring the property, as a business, mine, patent, &c., which the company proposes to work. Such a contract is only binding on the company if made, after its incorporation, by itself or its agents; no contract, it may be broadly stated, made before the incorporation of the company can bind the company, save in so far as it is adopted and expressly renewed by the company after its incorporation. Such contracts, and especially if they involve the issuing of shares as fully paid-up in return for the property acquired, require to be entered into with care, and may be safely carried out in manner following. Before the incorporation of the company, the owner of the property which it is proposed to acquire enters into an agreement for sale with someone as a trustee for the intended company. The articles of the company contain a clause empowering the directors to adopt and carry out this agreement; and after incorporation, the directors duly resolve so to

Preliminary contracts.

Mode of contracting.

† *Re Portuguese Cons. Mining Co., Badman's and Bosanquet's Cases*, W.N. (1890) 86, is a very recent case on this subject.

Chap. I. do. This of itself, however, is not sufficient; but a new agreement must be entered into between the company, the vendor, and the trustee, which refers to the former agreement, and by which the company binds itself to carry out the terms of that agreement. Or an agreement between a vendor and an agent of the company may be prepared before, and signed immediately after, the incorporation of the company, whose memorandum and articles should refer to the agreement as to be signed immediately after the incorporation, and authorise the directors to ratify the same; which they will as soon as possible after incorporation proceed to do.

Another method.

To relieve the trustee or agent of personal liability, the agreement should provide that upon the adoption of the agreement by the company the liability of the trustee or agent shall cease; and that if the company does not adopt the agreement by a certain day, prior to the day fixed for completion, the trustee or agent may at any time afterwards rescind it.

Paid-up shares, s. 57.

If paid-up shares are to be issued as part of the consideration for the purchase, the contract should be filed with the Registrar before the issue of the shares (s. 57), and should state the number of shares which are to so issue as paid-up, and preferably their denoting numbers also. The contract must be in writing, and, *semble*, should be executed by both parties to it.

Memorandum of a company limited by shares, s. 7, Form A., Sch. II.; by guarantee, s. 8, Forms B., C., Sch. II.

The memorandum of association of the company will be drawn up as in Form A., Sch. II., "Companies Act," or in the case of a company limited by guarantee in Form B. or C., Sch. II. (ss. 7, 8, 9); and the memorandum must, in the case of a company limited by guarantee, and should in the case of a company limited by shares, be accompanied by articles of association, unless in the latter case it is intended that the articles in Sch. I., Table A., are to be those of the company, in which case the memorandum need not be accompanied by articles, and those in Table A. become the articles of the company (ss. 13, 14); if they are not intended to be so, they must be expressly excluded (s. 14). The memorandum should

Articles of association.

Table A.

Signature of memorandum, s. 10;

of articles, s. 15.

be signed by each subscriber in the presence of a witness, who should attest the signature, though it may be signed by agent (s. 10 and note). The articles must be printed and signed by

Chap. I.

each subscriber to the memorandum and attested (s. 15) ; and the articles must be in separate paragraphs numbered arithmetically (s. 18). Both the memorandum and the articles must bear a shilling stamp ; they must be sent to the Registrar-General as Registrar of Joint Stock Companies, together with the fees chargeable under Sch. I., Table B., or, in the case of a company not having a capital divided into shares, under Sch. I., Table C. The Registrar will then register them (s. 16), and issue a certificate of the registration (s. 17) ; an engrossed certificate should accompany the memorandum and articles, to facilitate matters. A company cannot be registered in the same name as an existing registered company (s. 19 and note thereto). The memorandum, which is the "charter of the company," should express the objects of the company in terms wide enough to include everything necessary to the working of the company, as the powers of the company are contained in and strictly bounded by the terms of the memorandum.

s. 13.

Stamp.

Registration, s. 16.
Certificate, s. 17.

Name, s. 19.

Upon registration the company becomes incorporated with full corporate powers, but limited to the objects set out in its memorandum and bounded by any express or implied restrictions in the Act creating it.

Certain existing companies are empowered to register under the "Companies Acts" by s. 223, which defines the companies so authorised to register. It is to be observed that no such company can register as a company limited by shares, unless it falls within the definition of a joint stock company given by s. 225. But subject to the restrictions contained in s. 223, any company not formed under the Acts may register as unlimited or as limited either by shares or by guarantee. A meeting of the company's members must be called to consider the question of registration, and a majority of those present in person or by proxy must consent to the registration (s. 223). In the case of a company which has not the liability of its members limited by Act of Parliament, Royal Charter, or Letters Patent, the majority required to assent must consist of not less than three-fourths of the members present at the meeting : s. 223 (5). If a company propose to register as limited by guarantee, it must at the same meeting declare the amount which each member undertakes to

Companies
registering
under Part VI.,
s. 223.

s. 223 (5).

Chap. I.	contribute in the event of a winding-up : s. 223 (6). If a poll is
S. 223 (6).	demand at any such meeting, regard is to be had to the number
	of votes to which each member is entitled by the regulations of
	the company (<i>ib.</i>). A joint stock company (defined by s. 225),
Ss. 227, 228.	registering under this part of the Act, must comply with the
	requirements of s. 227 ; any other company with those of s. 228.
	The particulars required by those sections to be delivered to the
Declaration, s. 230.	Registrar must be verified by statutory declaration of the directors
	of the company, or any two of them (s. 230).
Banking com- pany, s. 232.	A banking company must comply with the provisions of
	s. 232 if it propose to be registered as a limited company.
	Companies not registering as limited companies, or in any case
	if their liability has previously been limited, are exempt from the
Registration fees, s. 233.	payment of fees on registration (s. 233) ; and a company
" Limited," s. 234.	registering as a limited company, must add the word " limited "
	to its name (s. 234).
Certificates of incorporation, ss. 235, 236.	The Registrar is to issue a certificate of incorporation, which
	is to be conclusive evidence of the company's incorporation,
	of its right to register under the Act, and of the date of regis-
	tration (ss. 235, 236).
Vesting of property, s. 237.	Upon such registration all property of the unregistered
	company passes to the registered company, but all existing rights
	and liabilities are saved, and existing actions and suits may be
Effect of regis- tration, s. 240.	continued (ss. 237-239). The provisions of any Act of Parliament
	or deed regulating the company, become the conditions and
	regulations of the company in the same manner as though they
	were contained in a memorandum and articles of association, and
	all the provisions of the Act apply to the company, subject to
	certain exceptions (s. 240).
	It has been thought useful to add, in a compendious form, the
	various requirements of the Act in matters to be observed and
	done during the course of the company's existence.
First general meeting, s. 70 ; annual, s. 81.	A general meeting must be held within four months of regis-
	tration (s. 70), and afterwards once at least in every year (s. 81).
	The regulations of the company contained in its articles of
Alterations of articles by special resolu- tion, ss. 82, 83 ; to be registered, s. 85.	association may be altered by special resolution (s. 82) defined
	by s. 83 ; a copy of any special resolution passed must be
	immediately forwarded to the Registrar (s. 85) ; and must be

annexed to, or embodied in, every copy of articles of association that may be issued after the passing of the resolution (s. 86). The memorandum of association can only be altered in certain particulars (s. 11 and notes thereto). The registered office of the company, which every company must have (s. 71), may be changed, notice being given to the Registrar (s. 72). The name of the company may be changed by special resolution, and with the sanction of the Governor in Council (s. 12); and notice of such change must be given to the Registrar (*ib.*). Under the powers of the articles, as originally framed, or as altered by special resolution, a company limited by shares may increase its capital by the issue of new shares; consolidate and divide its capital into shares of larger amount than its existing shares; or convert its paid-up shares into stock (s. 11); notice of any of which matters must be given to the Registrar (ss. 26, 32). A company may also, by special resolution, reduce its capital (ss. 42-51); but on this subject see the chapter on reduction, *infra*.

Chap. I.
and embodied
in articles, s. 86.
Memorandum
unalterable, s.
11.
Registered
office, s. 71;
change of, s. 72.
Change of
name, s. 12.

Increase of
capital, &c., s.
11.

Notice to be
given to Regis-
trar, ss. 26, 32.

Reduction, ss.
42-51.

It may also, by special resolution, subdivide its shares into shares of smaller amount, provided that the proportion between the amount paid, and the amount unpaid on each share, remains as before (s. 52); and every copy of the memorandum of association issued after the passing of such resolution, should state the number and amount of shares in accordance with such resolution (s. 53); and it is conceived that notice of such subdivision should be given to the Registrar. The company may also, by special resolution, make the liability of its directors unlimited, and a copy of such resolution is to be annexed to the memorandum (s. 41); and notice of this also, it is conceived should be given to the Registrar. All these alterations (save that of change of office and change of name) may be made only under the authority of the articles as originally framed, or as altered by special resolution.

Subdivision of
shares, s. 52.

Directors'
liability, s. 41.

The company must have a registered office (s. 71), which it may change (*supra*). It must keep its name painted outside its office, and must put its name on all notices, &c., of the company (ss. 73, 74).

Name to be
affixed to office
and used, ss. 73,
74.

Chap. I.

Register of
members, s. 23.

Every company must keep a register of members, containing the names and addresses of the members, the shares held by each member distinguished by number, and the amount paid-up on them, the date at which the name of a person was entered on the register, and the date at which he ceased to be a member (s. 23); and registers may be kept at places out of the colony. See the "Companies (Extra-Colonial) Registers Act," *supra*.

Annual list, s.
24.

Every company having a capital divided into shares must, within three weeks after the annual general meeting (or the first such meeting, if two are held), make up a list of all persons, members of the company, on the fourteenth day succeeding such general meeting, giving the names, addresses, and occupations of each member, and the number of shares held by him; and shall at the same time make up a summary containing the particulars mentioned in s. 24; and a copy of such list and summary is to be sent to the Registrar within seven days after such fourteenth day (*ib*). No notice of trust can be entered on the register (s. 28); the register is to be kept at the registered office of the company, and must be open daily for inspection in business hours (s. 30); but the register may be closed for thirty days in each year, notice of its closing being given by advertisement in some newspaper circulating in the district where the registered office is situated (s. 31).

Closing
register, s. 31.

Register of
mortgages, s. 75.

Every company must keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge; and this register is to be open to inspection by creditors and members of the company (s. 75).

Register of
officers, s. 77.

Every company not having a capital divided into shares, must keep at its registered office a register containing the names, addresses, and occupations of its directors or managers, and must notify to the Registrar any change in such persons (s. 77).

Banking com-
pany, statement
of debts and
assets, s. 76.

Every limited banking company, and every deposit, provident, and benefit society under the Act, must, before it commences business, and also on the first Monday in February and the first Monday in August in each year, make a statement in the Form

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D., Sch. I., to the Act, which it must put up in a conspicuous place in its office, and in every branch office (s. 76). A company may be wound-up (as well as for other reasons) if its number of members is less than seven (s. 131), and in such a case its members become individually liable for its debts (s. 80), if business is carried on for six months after the number of members falls below seven.

Members reduced to less than seven, s. 131, s. 80.

A company may contract in the same manner (as regards the form of the contract) as a private person (s. 68), and may appoint an attorney to execute deeds (s. 87); persons making, or accepting, &c., pro. notes or bills of exchange on its behalf, must take care that the name of the company appears on them, or they will themselves be personally liable on the notes, &c. (s. 74).

Contracts by company, s. 68.

Minutes of all resolutions and proceedings of general meetings of the company, and of directors or managers of the company, must be kept and duly entered in books for the purpose, and signed by the chairman of the meeting, or of the next succeeding meeting (s. 98).

Minutes of meetings, s. 98.

II.—REDUCTION OF CAPITAL.

Any company limited by shares may reduce its capital under the provisions of the "Companies Act"*; and the "Amending Act" (1888) now declares that the word "capital" used in the "Companies Act" is to include paid-up capital, and that the power to reduce capital conferred by that Act is to be taken to include power to cancel lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced with or without extinguishing or reducing the liability (if any) remaining on the shares of the company; and such liability is preserved to the extent to which it is not extinguished or reduced (s. 3). A company may also, if authorised so to do by its articles as originally framed or as altered, reduce its capital by cancelling any shares which at the date of the

Power to reduce

"Companies Act," 1888.

*See in addition to cases cited under s. 42, *In re Gatling Gun Co.*, W.N. (1890) 27.

Chap. II. passing of a resolution so to reduce the capital have not been taken, or agreed to be taken, by any person (s. 5, Act of 1888) ; and this by resolution merely, without the sanction of the Court.

"Companies Act," ss. 42-51.

Ss. 42-51 deal with reduction ; and provide that in the case of a company authorised by its regulations as originally framed, the capital may be reduced by special resolution ; but if not so authorised, the articles (regulations) must first be altered by special resolution so as to give the required authority ; then a further special resolution is required to effect the reduction (s. 42) ; but no resolution for reduction is to take effect until an order of the Court sanctioning the reduction has been obtained, and registered by the Registrar. In order to obtain this sanction, a

Petition, s. 44.
R. 64, Form 104.

petition is presented to the Court for an order confirming such resolution (s. 44, R. 64, Form 104). It is convenient, as in the form given, to embody the minute proposed to be registered in the petition, and then to refer to it in the order. After the passing of the resolution for reduction, the company must add to

Words "and reduced," s. 43.

its name the words " and reduced " as part of its name till such period as the Court shall direct (s. 43), except in cases coming

Act of 1888, s. 4.

under s. 4 of the Act of 1888, as to which see *infra*. The next

Application to settle list of creditors, R. 66.

step after presentation of the petition is to apply to the Court, *ex parte*, by summons in chambers (R. 66) for directions as to the proceedings to be taken for settling the list of creditors entitled (as defined by s. 45) to object to the proposed reduction, and the Court—that is, the Chief Judge—will upon that summons make an

Order, Form 56.

order (Form 56), fixing the date (s. 45) with reference to which the list of creditors is to be made out, directing what notices

Notice of petition and order, Form 57.

(Form 57) of the petition shall be published (R. 67), and fixing a day on which a list of the creditors of the company is to be filed in the Master's office (R. 68). The list will be verified by affidavit

(Form 58), made by some officer of the company (R. 68) ; the list and an office copy of the affidavit are to be left at the " chambers of the Judge." This direction seems to be copied *per incuriam* from the English order of March, 1868 (R. 6). Copies of this

Copies of list to be kept at office of company and open to inspection, R. 70.

list of creditors, giving the total amount due to the creditors and their names and addresses, but omitting the amounts due to them respectively (unless the Judge otherwise direct), shall be kept at the registered office of the company, and of their solicitors

and Sydney agents ; and are to be open to inspection by any **Chap. II.**
one (R. 70).

But if the proposed reduction does not involve either the Under Act of 1888, s. 4. diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, the creditors of the company are not, unless the Court otherwise direct, entitled to object, or required to consent, to the reduction (s. 4, Act of 1888) ; in which case none of these provisions for settling the list of creditors, obtaining their consent, &c., need be complied with ; nor need the company use the words "and reduced" till the hearing, and advertisements and the use of these words may be altogether dispensed with, on application which may be made at the hearing (s. 4, *ib.*, and notes thereto).

In other cases, however, after filing the affidavit of the list of Notice to creditors, R. 71 Form 59. creditors above referred to, the company within seven days must send to each creditor a notice (Form 59) in terms of R. 71, stating, among the other matters there mentioned, the time within which, if he claims to be a creditor for a larger amount, he must send in his name and address, the particulars of his claim, and the name and address of his solicitor, to the solicitor of the company, that time having been fixed by the Judge on previous application by summons *ex parte*.

Notice (Form 60) of the list of creditors filed under R. 68, Advertisement of list, R. 72, Form 60. must, after the filing of the affidavit required by that rule, be published at such times and in such newspapers as the Judge directs (R. 72) ; such direction may be obtained on summons *ex parte* in chambers, and conveniently at the same time as the direction as to time required under R. 71. The person to whom the particulars of debts or claims are by the notices under RR. 71, 72, required to be sent in should file an affidavit (Form 61) Affidavit of claims, R. 73, Form 61. within such time as the Judge shall direct, stating the result of such notices, and verifying a list containing the names and addresses of persons who have sent in claims ; and a competent officer of the company should join in such affidavit and distinguish the debts and claims which are admitted or wholly or partially disputed by the company (R. 73) ; and the list and an office copy of the affidavit are to be left at the "chambers of the Judge" within such time as the Judge directs.

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Notice to prove,
R. 75, Form 62.

If the company do not admit a debt, they may either set apart and appropriate the full amount of such debt in such manner as the Judge may approve (s. 46), or if the Judge so direct send a notice to the creditor (Form 62), requiring him to come in and prove his debt. Such proof will be taken before the Master, and costs will be allowed for and against the creditor in the same manner as in the case of persons coming in to prove debts in a cause (R. 75); see Eq. Rules, R. 214. The company must set apart and appropriate the amount of the debt so proved (s. 46), unless the creditor consent to the reduction; and so with all creditors, their consent will only be dispensed with on the company setting apart a sum to meet their debt (*ib.*). The result of the settlement of the list of creditors is stated in a certificate by the Master (R. 76, Form 105); and after the expiration of eight clear days from the filing of such certificate, the petition may be placed in the list for hearing (R. 77); and notices of (Form 63) the hearing must be published as the Judge may direct; as to advertisements, see note to s. 47; and in cases under s. 4 of the Act of 1888, see *supra*, and notes under that section.

Certificate of
settlement of
list, R. 76, Form
105.
Hearing of
petition, R. 77,
Form 63.

Creditor
appearing on,
R. 79.

On the hearing any creditor settled on the list who has not signed a consent to the reduction, and whose debt has not been discharged or secured, may, on giving two clear days' notice to the solicitor of the company, appear to oppose the application (R. 79). If his claim is disputed, and has not been adjudicated upon under R. 74, the costs of his appearance will be in the discretion of the Court; otherwise a creditor appearing is in general entitled to his costs (R. 80). On the hearing the Court may direct debts of creditors who do not consent to be secured, and may adjourn the petition to allow this to be done (R. 81).

Costs, R. 80.

Directions on
hearing, R. 81.

Order, Form 106,
R. 82, s. 47.

The order (Form 106) confirming the reduction should state in what manner and at what times notices of the registration of the order and of the minute (*infra*) approved by the Court are to be published (R. 82, s. 47); and this publication being a requirement of the Act itself, cannot be dispensed with, even in cases under s. 4 of the Act of 1888. The order will also fix a date up to which the words "and reduced" are to be used as part of the name of the company (R. 82, s. 43, and notes).

The minute (Form 107) must be approved by the Court (s. 47) ; **Chap. II.** in its proposed form it is more conveniently placed in the petition itself, as suggested *supra* ; it will show the amount of the capital, the number of shares, and the amount of each share, as altered by the order (s. 47), and also the amount deemed to be paid-up on each share (s. 4, Act of 1888) ; the form given (Form 107) also shows the number and amount of the shares previous to reduction, and is in a form approved by Kay, J., in *West Cumberland Iron and Steel Co.*, W.N. (1888) 54 ; see also form in *Re American Pastoral Co.*, W.N. (1890) 62.

Minute, Form 107.

A copy of the order and minute must be sent to the Registrar, who will register them, and issue a certificate of such registration (s. 47) ; and the minute will thereupon become part of the memorandum of association (s. 48) ; and must be embodied in every copy of the memorandum issued subsequently to the registration (s. 50).

Registration of order and minute, s. 47.

III.—PRACTICE ON WINDING-UP.

[References, except where otherwise stated, are to the Sections of the "Companies Act, 1874," and to the Rules of Court of the 1st April, 1889, *supra*.]

Companies registered under this Act may be wound-up in three ways :—

Modes of winding-up, ss. 131, 132, 180, 198.

(1) By the Court.

The circumstances under which a company may be wound-up by the Court are set out in ss. 131, 132.

(2) Voluntarily, without the intervention of the Court, s. 180.

(3) Voluntarily, but under an order and subject to the supervision of the Court, s. 198.

The Court which has jurisdiction in the winding-up of companies under this Act, is defined by s. 133 to mean the Supreme Court in its equity jurisdiction exercised by and before the Primary Judge in Equity ; and by s. 221, the general practice in equity, where applicable, was to apply to all proceedings for winding-up a company until rules were made, and by R. 88 this

Jurisdiction, s. 133.

Chap. III. practice in cases not provided for by the Act or the Rules is

Subsequent
proceedings, s.
133, R. 7.

made to apply to all such proceedings. After an order for winding-up has been made by the Primary Judge, subsequent proceedings may, if so directed, be taken before the Judge in Bankruptcy (subject to appeal to the Primary Judge), s. 133, which refers to the Chief Commissioner of Insolvent Estates; by s. 6 of 38 Vict. No. 1, the Chief Commissioner of Insolvent Estates was directed to be deemed the Court within the meaning of Part IV. of the "Companies Act" when all proceedings subsequent to the order for winding-up were directed to be taken before him; and now, by the "Bankruptcy Act" of 1887 (51 Vict. No. 19), the Chief Commissioner is to be interpreted to mean the Judge in Bankruptcy, and his powers are to be exercised by the Judge in Bankruptcy. In consequence, however, of the anomaly of one Judge sitting in appeal from the decisions of a Judge of equal standing and co-ordinate jurisdiction (*Pickering's Case*, 10 N.S.W. L.R. Eq. at p. 40), special provision was made by R. 7 for subsequent proceedings to be taken before the Master in Equity; and this is now the usual practice. The Act also makes provision (ss. 145-150) for subsequent proceedings being had in a District Court, but there appears to have been no rules made or machinery provided for carrying out these provisions of the Act. In the case of companies registered under the "Mining Partnerships Act" (24 Vict. No. 21), similar provisions made under that Act were, at the time when the "Companies Act" was passed, nugatory, it being found to be impracticable to wind-up such companies in the District Court: *In re Grand United G. M. Co.*, 10 N.S.W. L.R. Eq. at p. 272.

In a District
Court, ss. 145-
150.

It will be more convenient to treat here of a winding-up by the Court, and afterwards to note any differences between that and the other methods of winding-up. Any application to the Court for the winding-up of a company must be by petition (Form No. 67, *supra*), which may be presented (a) by the company; (b) by one or more creditors; (c) by one or more contributories of the company, or by all or any of the above parties together or separately, s. 134.

Who can apply
for winding-up
order, s. 134.

Company's
petition.

(a) The company can petition; but the more usual course appears to be for a creditor to do so.

(b) This is generally based upon the inability of the company to pay its debts, and the proof depends upon the terms of s. 132. By sub-s. 1 of that section a company is deemed unable to pay its debts when a sum exceeding £50 is due by the company to a creditor, and the company has, for three weeks after demand duly made, neglected to pay it; by sub-s. 2 the company is deemed unable to pay its debts when execution (*semble*, for any amount not necessarily £50) is returned unsatisfied. Either of these circumstances may be taken advantage of either by the company, a creditor, or contributory; and it does not appear necessary that the petitioning creditor should be a creditor for more than £50, or should be the same creditor who has made the demand under sub-s. (1), or issued execution under sub-s. (2): see *London and Birmingham Alkali Co.*, 1 De G. F. & J. 257; *In re Milford Docks Co.*, 23 Ch. D. at p. 295.

Chap. III.
 Creditor's
 petition, s. 132.

An order for winding-up will go as a matter of course if there be a valid debt established and not disputed, and it is shown that the company is unable to pay its debts within the meaning of the statute. But the Court will have regard to the wishes of other creditors as to the order to be made, s. 144 and note thereto.

(c) Under s. 135 a contributory can only petition where the members of the company are reduced in number to less than seven (and see s. 131, sub-s. 3), unless he be a holder of shares as original allottee, or the shares have been held by him and registered in his name for six months during the eighteen months previously to the winding-up, or have devolved upon him through the death of a former owner; but shares are deemed to have been held by him and registered in his name if held or registered in the name of his wife, either before or after her marriage, or in the name of trustees for his wife or for the contributory. It has been held that the holder of fully paid shares is a contributory within the meaning of s. 126 and of section 36, and can present a petition for winding-up a company: *National Savings Bank Association*, 1 Ch. 547; but to entitle him to the order he must allege (and prove) that there will be a substantial surplus: *Rica G. W. Co.*, 11 Ch. Div. at p. 43.

Contributory's
 petition, ss. 134,
 135.

The Court will be slow to grant a winding-up order on the

Chap. III. petition of a contributory if the company oppose, because the Act confers an absolute power on a three-fourths majority of the shareholders of saying whether the company shall go on or not, ss. 181 (1), 83.

Petition, R. 4. The petition (Form No. 67, *supra*) must be verified by affidavit (R. 4 and Form No. 2), which should be made by the petitioner, or, in case the petition is presented by the company, by some principal officer thereof, and should be *sworn after* and filed within four days after the petition is presented (though the time for filing may be extended by order).

Such affidavit is *primâ facie* evidence of the facts in the petition, which, if unopposed, requires no further affidavit in support. The facts appearing in the petition should show sufficient reason why a winding-up order should be made, as the order is made *secundum allegata et probata*.

Petition, how presented. The petition, when ready, should be taken to the equity office, where, after being stamped with the Court stamp, it will be endorsed with the usual fiat, and signed by the Master in Equity, or by the Deputy Registrar, or by the Chief Clerk on his behalf, who will answer the petition for the next motion day. Every contributory or creditor is entitled to be furnished by the petitioner's solicitor with a copy of the petition within twenty-four hours, on payment of 4d. per folio of seventy-two words, R. 5; but the solicitor should be satisfied that the applicant answers to such description.

Advertisement of petition, R. 2, The petition must be advertised seven clear days before the hearing; such advertisement should state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and Sydney agent (if any), R. 2, and Form No. 1. But the Judge may, in such cases as he shall think fit, dispense with any advertisement required by these rules, R. 51.

sometimes dispensed with, R. 51.

The papers in which the advertisements appeared should be produced at the hearing.

Service, R. 3. The petition, unless presented by the company, must be served on the company in the way set out in R. 3, Affidavit of Service, Form No. 73. A petitioning creditor may withdraw his petition after presentation and advertisement, but only on payment of the costs of any creditors or contributories appearing on it; he

Withdrawal of petition.

is not a trustee for other persons, nor is he bound to bring the petition to a hearing, but he is entitled to dismiss it, or to agree with the company for its withdrawal on terms. If the petitioner elect to dismiss his petition, he must provide for the costs of creditors or contributories who may appear on it: *Buckley*, p. 212.

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Petitioner
dominus litis.

After the presentation of petition, and before order made, and whether the winding-up be compulsory or under supervision (ss. 138, 199), proceedings against the company in any action, &c., may be restrained on such terms as the Court thinks fit, upon the application (which may be *ex parte*) of the company, or of a creditor, or of a contributory; and on the application of a creditor, proceedings against the company or a contributory may be restrained under s. 241, in the case of a company registered under Part VI., and under s. 245 in the case of an unregistered company.

Restraining
actions before
winding-up
order, ss. 138,
199.

The Court may also appoint a provisional liquidator at any time after the presentation of the petition and before the first appointment of liquidator, s. 138. Such application may be made by summons, without advertisement or notice to any person, unless the Judge shall otherwise direct, R. 15; such liquidator may be appointed without security, R. 15, Form No. 9, see also R. 56.

Provisional
liquidator, s.
138;

without
security, RR.
15, 56.

Upon hearing the petition the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make an interim order, or any other order that it deems just, s. 139, Forms Nos. 70, 71, 72.

What order
may be made on
hearing, s. 139.

On the hearing, the company, its creditors, and contributories are the only persons entitled to be heard: *Bradford Navigation Co.*, 5. Ch. 600.

If the petition be granted, the winding-up order (Forms Nos. 3 & 4) is drawn up and passed and entered pursuant to the practice as to orders in equity.

Winding-up
order.

The petition may previously be amended, Form No. 69. Every order for the winding-up a company by the Court, or subject to its supervision, must, within twelve days after the date thereof, be advertised by the petitioner once in the Government Gazette, R. 6, Form No. 5. This rule, if strictly adhered to, might give

Advertisement
of order for
winding-up,
R. 6.

Chap. III. rise to serious inconvenience, but Mr. Justice Manning has lately laid down the practice that the order is to be dated as upon the day of settling the same. The order for winding-up must also be served upon such persons (if any) and in such manner as the Court may direct (R. 6), and a copy must forthwith be forwarded by the company to the Registrar of Joint Stock Companies, who will make a minute thereof (s. 141).

Service of
order, R. 6.

On Registrar,
s. 141.

Upon the application, by motion, of any creditor or contributory, the Court may make an order to stay all proceedings in the winding-up, either altogether or for a limited time. Proof must be given, to the satisfaction of the Court, that the proceedings ought to be stayed (s. 142).

Order, how
varied.

An order improperly or irregularly obtained may be varied or discharged on motion or petition by the Judge by whom it was made.

Appeals, s. 178,
and of, "Equity
Act, 1880," ss.
70-79, and
Equity RR.
183-185.

All orders and decisions made in the winding-up, including the winding-up order itself (*In re National Funds Assurance Co.*, 4 Ch. Div. 305), are subject to appeal by way of re-hearing, s. 178; and by the same section this appeal is to be made within the same time and in the same manner and subject to the same conditions as appeals from an order of the Primary Judge within his ordinary jurisdiction, which are governed by ss. 70-79, "Equity Act, 1880," and R.R. 183-185 thereunder, made applicable by R. 88 under the "Companies Act."

Stay of proceed-
ings, "Equity
Act, 1880," s. 75.

An appeal operates as a stay of proceedings unless the Judge otherwise directs, "Equity Act, 1880," s. 75.

Summons to
proceed, R. 7.

A copy of every order for winding-up a company, certified to be a true copy thereof, as passed and entered, shall be left by the petitioner "at the chambers of the Judge," within ten days after the same shall have been passed and entered, and in default thereof any other person interested in the winding-up may leave the same, and the Judge may, if he thinks fit, give the carriage and the prosecution of the order to such person.

Upon such copy being left, a summons should be taken out to proceed with the winding-up of the company, and should be served on all parties who may have appeared at the hearing; the conduct of further proceedings as to the appointment of the official liquidator, proof of debts, and time when the list of

contributories is to be brought in, is regulated by R. 7, Form Chap III.
No. 74.

The former part of this rule has been adopted from the English rule *totidem verbis*, but the direction contained therein to leave a copy of the order at the chambers of the Judge has not the same force here as in England, where the subsequent proceedings are carried on in the Judge's chambers. The spirit of the rule requires that the order should be carried into the Master's office, where the subsequent proceedings are to be taken.

RR. 57, 58 regulate the attendance and appearance of parties or their representatives, and costs thereon after the order is made; under R. 59 a creditor or contributory must first enter his name, &c., in the "Appearance Book" (Form No. 52) before he is entitled to attend any proceedings at the Judge's chambers or in the Master's office, and for that purpose an "Appearance Book" is kept in the Master's office.

Attendance of parties, RR. 57, 58.

Leave to attend may be obtained on summons, Form No. 79; order thereon, Form No. 80. The Judge or the Master may appoint one contributory or creditor to represent before him at the expense of the company any class of contributories or creditors, R. 58.

When the Court directs a meeting of creditors and contributories under ss. 144, 200, for the purpose of ascertaining their wishes, notice in writing must be given to every creditor or contributory by the official liquidator, of the time, place, and object of the meeting, seven clear days before the day appointed, R. 43; or such notice may be given by advertisement if the Judge so direct, R. 43, Form No. 44. The Judge will appoint some person to be chairman of such meeting, which appointment is testified in a memorandum signed by the Master, and is in Form No. 46, R. 45. And the chairman's reports as to the result of the meeting in Form No. 47. The voting may be by proxy, R. 44, Form No. 45. [A proxy form does not require to be stamped under the provisions of the "Stamp Duties Act" unless it be under seal, when it requires a £1 stamp as a deed.]

Meetings of creditors, &c., ss. 144, 200.

Notice thereof, R. 43.

Chairman of meeting, report, R. 45.

Voting by proxy, R. 44.

Service of summonses, notices, &c., upon contributories and creditors is provided for by RR. 60, 61, and substituted service

Summonses, how served, RR. 60, 61.

Chap. III. or service out of the jurisdiction may be obtained, Forms Nos. 83, 84.

Official
liquidator,
appointment,
s. 151, R.E. 8, 9,
11.

"For the purpose of conducting the proceedings in winding-up a company, and assisting the Court therein," an official liquidator may be appointed, s. 151. As to order appointing him, and contents thereof, R. 11, Form No. 8.

By R. 8 the Judge may appoint a person to the office of official liquidator without advertisement or notice, or he may fix a time and place for the appointment, which time and place are to be advertised (R. 9, Form No. 6) in such manner as the Judge shall direct.

In England the settled practice is to direct a reference to chambers (*In re General Financial Bank*, 20 Ch. Div. 276), but here the appointment is not infrequently made on the hearing without notice or advertisement. In any case there should be affidavits of fitness of proposed liquidator (Form No. 75).

Security by
official
liquidator,
R. 10.

The official liquidator must give security by recognizance (Form No. 10) with two sureties, who must justify (Form No. 11, and, in the case of a guarantee company, Form No. 11A*) in such sum as the Master may approve, unless the Judge otherwise direct, R. 10. The amount of security is settled on summons (Form No. 76), but may afterwards be reduced (Summons Form No. 81, order thereon Form No. 82).

Certificate,
R. 12.

When the security has been given, it is to be certified by the Master, R. 12. Here an official assignee is frequently appointed, and without security, because he is an officer of the Court.

Advertisement
of appointment,
R. 14.

The appointment is to be advertised as the Judge shall direct, R. 14, Form No. 15.

Resignation,
removal, &c., s.
152, R. 16.

The official liquidator may resign or be removed on due cause shown, and any vacancy filled up, s. 152 (*cf.* ss. 191, 201, 203), R. 16, and by the section a salary or remuneration is to be paid to the official liquidator by way of percentage or otherwise as the Court may direct, &c., R. 18. In England a scale of remuneration has been fixed, but none has been adopted in New South Wales. For affidavits in support of application for remuneration see Forms Nos. 89, 90; summons for payment, Form No. 91, Order, Form No. 92.

Salary, s. 152,
R. 18.

*This form has been furnished by the kindness of the Master in Equity, and is the form approved by him for use in such cases.

The official liquidator may, with the sanction obtained on **Chap. III.** summons) of the Court, appoint a solicitor to assist him in the performance of his duties, s. 156. Form No. 12. And the solicitor's costs will be paid out of the assets as part of the costs of the winding-up after the costs of the petition and before any remuneration to the official liquidator: *In re Massey*, 9. Eq. 367. But the liquidator is not personally responsible for the costs of the solicitor summons to pay solicitor's costs, Form No. 102, Order, No. 103.

After appointment the official liquidator should take under his control all the property, &c., to which the company is entitled, s. 153; see also s. 159, under which an order for delivery of money, books, &c., may be obtained, Forms Nos. 13, 77, 78. Provision is made for a vesting order, in the case of an unregistered company, by s. 247. He should with all convenient speed proceed to make up, continue, &c., the books of account of the company, R. 17.

The official liquidator must leave at the Master's office, at the times directed by the order appointing him, his accounts, and they are to be passed and verified in the same manner as receivers' accounts on summons to proceed on account, R. 19.

Moneys received by the liquidator are to be paid in to the bank named in the order appointing him in accordance with R.R. 35, 36.

As to delivery out of securities, &c., and payment out of moneys, R. 41, interim payment into Court, R. 42, s. 154, sets out the things that the official liquidator has power to do with the sanction of the Court [obtained on summons, R. 48], unless the Court has provided (s. 155) that he may exercise these powers without such sanction [for forms of such an order, see Form No. 78A, and for form of order to carry on business, Form No. 96.]

Actions will be brought and continued by or against a registered company in its corporate name, s. 154. In the case of an unregistered company after vesting order made the official liquidator may sue or be sued in his official name, or in such name as the Court may direct, s. 247.

Sales by the official liquidator are made in accordance with R. 31 (order for sale, Form No. 97). In certain cases a sale will

Chap. III. be made in the same manner as under a decree, Eq. RR. 231-233, "Equity Act, 1880"; Seton, pp. 1391-1413; Dart's V. & P. (6th Ed.) 1313 *et seqq.* Daniell's Ch. Forms (4th Ed.) pp. 1164-1208.

Bills of exchange, R. 46.

The sanction of the Judge to the drawing, &c., of a bill of exchange or promissory note by any official liquidator is to be testified by memorandum on such bill of exchange or promissory note signed by the Master, R. 46, Form No. 48.

Inspection of books, &c., s. 207, R. 55.

By s. 207 creditors and contributories may have an order for an inspection of the books, &c., of the company, and they may inspect the documents relating to the winding-up at all reasonable times without order, R. 55; as to discovery from official liquidator, see s. 207 and note thereto.

Discovery, s. 207.

Actions, &c., after winding-up order, s. 140.

After winding-up order, no action, &c., shall be commenced or proceeded with, except with the leave of the Court and subject to such terms as the Court may impose, s. 140 (and *cf.* s. 214). This section (140) applies also to a winding-up under supervision, s. 202; and the Court may stay actions, &c., in a voluntary winding-up, s. 189. S. 240 makes all the provisions of the Act apply to companies registering under Part VI.; and s. 242 stays actions against the contributories of such a company, except by leave of the Court. By s. 243 the provisions of the Act as to winding-up are applied to unregistered companies, and by s. 246 the winding-up order in such cases stays proceedings against a contributory of such company, except by leave of the Court. Application for leave to proceed against a company, after order for winding-up, should be by summons in chambers: *Hagell v. Currie*, W.N. (1867) 75; order for liberty to proceed, Form No. 101. Before order for winding-up made, execution may be stayed as a proceeding under s. 138; after order made, execution can only issue by the leave of the Court, ss. 140, 214, which will very seldom be granted.

Execution before order, s. 138; after order, ss. 140, 214.

Application to stay actions.

In England, under the "Judicature Act," applications to stay are made *ex parte* in the Court where the actions are pending; previously to that Act the practice (which it is conceived would apply here) was to apply to the Judge before whom the petition was presented to stay actions wheresoever pending: Buckley, p. 218.

It is in the discretion of the Court to avoid or confirm any **Chap. III.** dispositions of the company's property, or alterations in status of Dispositions of property, &c., after commencement of winding-up, s. 204. the members of the company, after the commencement of winding-up, s. 204, *cf.* ss. 182, 214, 215: the date of the commencement should therefore be noted, as to which see ss. 137, 181, but a voluntary winding-up is different, arising from the voluntary act of the members, ss. 182, 184; as to what transactions will be validated by the Court, see s. 204 and note thereto. By When validated s. 204. s. 240 these provisions apply to companies registered under Part VI., and by s. 243 to unregistered companies.

As to the effect of a winding-up order on share capital of a company limited by guarantee, see s. 143.

Upon the return of the summons for proceeding with the winding-up (R. 7), a time may, if the Judge think fit, be fixed for the proof of debt, and directions given as to the advertisements to be issued; or, as is usually the case, proceedings will be taken before the Master in Equity, and for the purpose of ascertaining the debts and claims due from the company, and of requiring creditors to come in and prove their debts and claims, an advertisement will be issued at such time as he shall direct, R. Proof of debts, R. 7. Advertisement R. 20. 20, Form No. 16.

Claims should be sent in by creditors to the official liquidator, Form No. 98.

When the registered office of the company is in Sydney Advertisement for creditors. directions will usually be given to insert the advertisements in two Sydney daily papers, in addition to the advertisement in the Government Gazette, R. 51; and when the registered office is in the country, advertisements will also be directed to be inserted in a local newspaper. Except in the case of the Government Gazette, the Master requires proper evidence of the due insertion of advertisements in newspapers. Evidence of insertions.

Unless required by notice from the official liquidator, creditors need not attend upon the adjudication, nor prove their debts or claims; but, if such notice be given, they must come in and prove within the time specified, R. 21. Thereupon the official liquidator should investigate such debt or claim, and leave at the Master's office a list of all the debts or claims, distinguishing what are justly due and proper to be allowed, and what should be Proceedings on proving, R.R. 21, 22.

Chap. III. proved by the creditors ; prior to the adjudication, he should file an affidavit (Form No. 17) setting forth the same, R. 22.

Allowance of claims. At the time of adjudication the Master may either allow the debts or claims upon the official liquidator's affidavit, or adjourn them for further proof, R. 23.

Notice of allowance, R. 23. Notice (Form No. 19) should be given by the official liquidator to the creditors whose debts have been allowed, *ib.*

Notice where debts not allowed, R. 24. Notice (Form No. 20) must also be given by the official liquidator to the creditors whose debts have not been allowed ; as to which see R. 24.

Service of notices, RR. 60, 61. The notices above-mentioned may be served by post, RR. 60, 61.

Creditor's affidavit, R. 53. The creditor should file his affidavit in proof of debt (Form No. 21) in the Master's office, and give notice thereof to the official liquidator, R. 53.

Appearance to be entered, R. 59. The creditor must also enter an appearance before he is entitled to attend any proceedings, R. 59.

Master's certificate, R. 27. The Master's certificate (Form No. 22) states the result of the adjudication, R. 27.

A creditor whose debt is admitted will receive a form of notice to receive such debt, Form No. 23.

How varied, "Equity Act, 1880," s. 69, R. 227. Application may be made by summons or motion to vary or discharge the Master's certificate, "Equity Act, 1880," s. 69, Eq. R. 227, or the parties may take the opinion of the Judge during any proceeding before the Master, *ib.* s. 69, Eq. RR. 224, 225, adjourning the matter into Court for that purpose.

Dividends, how paid. After the time for varying the Master's certificate has passed, the official liquidator, if he can show, on his affidavit in support of the application, that the funds are sufficient to pay the dividend, as well as provide for the costs of the winding-up, should apply for leave to pay a dividend to the creditors, Form No. 99.

Costs of Proof, R. 26. Such creditors as come in and prove their debts pursuant to notice are allowed their costs of proof in the same manner as in the case of debts proved in a cause, R. 26. The costs are fixed by the Master, "Equity Act, 1880," Eq. R. 214, and added to the debt when established.

List of contributions, s. 137. As soon as may be, after making an order for winding-up

the company, the Court shall settle a list of contributories, s. 157; **Chap. III.**
see also ss. 158, 128, 130. As to the A and B list, see note to s. 157.

The official liquidator, with all convenient speed, after his appointment, or at such time as the Master shall direct, makes out and leaves at the Master's office a list (Form No. 25) of the contributories; as to which see R. 28, verified by affidavit, Form No. 24. Thereupon the official liquidator obtains an appointment to settle the list, R. 29, notice of which is to be given (four clear days before the day appointed to settle the list, or to vary, or add to it) to every person included in such list, Form No. 26; and as to affidavit of service of such notice, Forms No. 27, 28; if the list be varied or added to (R. 29), a supplemental list shall be made out as above and served, Forms Nos. 29, 30.

To be made out by official liquidator, R. 28.

Appointment to settle, R. 29.

Supplemental list, R. 29.

At such meeting to settle the list, the list, the affidavit of service of notices, the Government Gazette, and the other newspapers containing the advertisement, if so directed, should be produced.

The meeting.

Service upon contributories is effected (except when personal service is required) by sending the notice, &c., through the post in a prepaid letter according to R. 60.

Service, R. 60.

All contributories on the list, and all creditors whose debts are allowed, are entitled (after compliance with R. 59) to attend, at their own expense, on the settlement of the list, R. 57; and persons may be appointed as representatives, R. 58.

Attendance, R. 57.

On the day appointed for settling the list the alleged contributories, who desire to object to being placed thereon, should attend in the Master's office, and when, as the practice is, the list is read over, they should state that they so object. A certain time, according to circumstances, is then given by the Master, within which each contributory should file an affidavit of objections, in answer to the affidavit of the official liquidator, and the opposed cases are then adjourned. Unopposed cases are usually disposed of then and there.

Opposed cases.

Unopposed cases.

The result of the settlement of the list is stated in a certificate by the Master, R. 30, Form No. 31.

Master's certificate, R. 30;

The summons to settle the certificate should be served on the parties who have appeared, or on their solicitors, or notice of the appointment should be given them as directed by R. 60.

how settled, R. 60;

Chap. III. If, after the expiration of four clear days, no party has obtained a summons (Form No. 85) to take the opinion of the Court thereon, the certificate will be approved by the Judge: "Equity Act, 1880," Eq. R. 226.

when approved "Equity Act, 1880," R. 226;
how varied, *ib.*
Equity R. 227. An application (on summons, Form No. 86) may be made within eight days, to discharge or vary any such certificate signed and adopted as aforesaid, *ib.*, Eq. R. 227; and even later, on special grounds, and by leave.

Rectifying list,
ss. 33, 157. Application may be made by summons at any time before settlement of the list of contributories for an order rectifying the register of shareholders, ss. 33, 157, Form No. 87.*

Costs on
settling list. An alleged contributory, who has successfully resisted the application to settle him on the list, is, as a general rule, entitled to his costs, which are fixed by the Master at a gross sum, although taxation may be had at the party's risk. If such contributory be finally settled on the list, he must pay the costs of his unsuccessful resistance.

Calls, R. 32. Every application to the Judge to make calls on the contributories is made by summons (Form No. 34) stating the proposed amount of such call, R. 32, *q.v.* as to service of summons, &c., and RR. 60, 61.

Advertisement,
R. 32. If the Judge shall so direct, notice of such intended call may be given by advertisement, R. 32, Form No. 35. The official liquidator should make an affidavit in support of the proposal for call, Form No. 33, and affidavits of service of the summons, and of the insertion of the advertisement, if directed.

Service of order,
R. 33. When the order for a call has been made, Form No. 36, a copy should be forthwith served upon each of the contributories included therein, together with a notice from the official liquidator specifying the amount or balance due from such contributory, R. 33, Form No. 37. This order need not be advertised unless, for any special reason, the Judge shall so direct, R. 33. The order may be served by post, RR. 60, 61.

Further pro-
ceedings.
Four-day order,
R. 34. Further proceedings relating thereto are adjourned to a time subsequent to the day appointed for payment of the call, and at the time appointed by any such adjournment, or upon a summons

* An issue was directed to be tried under the final clause of s. 33, *In re Gurney Patent Brick Co. and John Hawker*, 6 N.S.W. W.N. 150.

(Form No. 100) to enforce such payment, duly served, and upon Chap. III. proof of service of the order and notice of the amount due, and non-payment, a four-day order (Form No. 39) may be made for defaulting contributories to pay the sum required by the former order, R. 34.

An affidavit in support of the application for payment of a call due (Form No. 38) is required, and an affidavit of service of the order and notice. This order should be served personally, and should have endorsed thereon a memorandum to the effect set out in "Equity Act, 1880," R. 167.

The Court has power on any order to direct a contributory to pay the sum due into a bank named for the purpose in the order instead of to the official liquidator, s. 162, and will ordinarily do so, R. 37, Forms Nos. 36, 39. But under R. 37, if the order is to be enforced by a writ of *fi. fa.*, the official liquidator should obtain an order for payment to himself.

An attachment will only issue when the order directs the payment of money into Court, "Equity Act, 1880," R. 177.

If an order be made for payment into a bank, a notice (Form No. 40) is endorsed on it informing the contributory how the payment is to be made, R. 38, and a certificate of payment (Form No. 41) will be furnished by the official liquidator to the cashier of the bank to be signed by the latter and delivered to the party paying in the money mentioned. For the purpose of enforcing such an order, an affidavit of non-payment (Form No. 43) should be made, R. 39.

The official liquidator may, with the sanction of the Court, compromise all claims by or against the company, ss. 210, 211. But in a voluntary winding-up the sanction required is that of an extraordinary resolution of the company. Application for the Judge's sanction to a compromise with a contributory must be by summons and supported by affidavit (Form No. 94) of the official liquidator, R. 47, on which an order sanctioning the compromise will be made, Form No. 95. A form of agreement of compromise with a contributory is given (Form No. 49). The sanction of the Judge will be testified by endorsement of a memorandum signed by the Master on the agreement in Form No. 50 (R. 47). In a voluntary winding-up a compromise with

Payment into bank, s. 162, R. 37.

Order enforced by *fi. fa.*

By attachment, "Equity Act, 1880," R. 177 thereunder.

Compromises, ss. 210, 211, R. 47.

Form of agreement of compromise;

binding in a voluntary

Chap. III. creditors is binding on them all if acceded to by three-fourths in

winding-up, number and value of them, s. 187.

s. 187.
Termination of
winding-up,
R. 62.

Upon the termination of the proceedings in chambers for the winding-up, the official liquidator should bring in a balance sheet, verified by his affidavit. Upon payment of the balance, the recognizance by the official liquidator and his sureties may be vacated, R. 62.

Master's certifi-
cate, R. 63.

After the final account has been passed and the balance due thereon has been paid, the Master makes a certificate (Form No. 54) that the affairs of the company have been completely wound-up, R. 63. And in case the company has not been already dissolved, the official liquidator should immediately after such certificate has become binding (*i.e.*, not having been appealed against, has been approved by the Judge) apply to the Judge for an order (Form No. 55) that the company be dissolved from the date of such order, and the company will be dissolved accordingly, s. 169, R. 63. This order should then be reported by the official liquidator to the Registrar, who will make a minute of the dissolution, s. 170. The books, &c., of the company and of the liquidators may be disposed of as the Court directs, s. 206, or, when the company is wound-up voluntarily, as the company by an extraordinary resolution directs, *ib.*

Dissolution
order, s. 169,
R. 63.

Reported to
Registrar,
s. 170.

Disposal of
books, s. 206.

Voluntary
winding-up.

Any company registered under the "Companies Act" (and whether formed under it or not) may be wound-up voluntarily; but no unregistered company can be so wound-up.

When, s. 180.

Such companies can be wound-up voluntarily in any of the cases mentioned in s. 180. These are (1) whenever the period fixed for the duration of the company expires, or the event occurs upon which it is provided by the articles that the company shall be dissolved, and the company in general meeting has passed a resolution for a voluntary winding-up; (2) whenever a company has passed a special resolution requiring the company to be wound-up voluntarily; or (3) whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business and that it is advisable to wind-up the same; see s. 180 and notes thereto. So that a company desirous of winding-up, if not in such case as mentioned in

sub-section 1, must either pass a special resolution for winding-up, **Chap. III.** or an extraordinary resolution in terms of sub-section 2.

The voluntary winding-up commences at the time of the passing of the resolution to wind-up; that is to say, on a special resolution at the date of the passing of the confirmatory resolution; in the case of an ordinary resolution under sub-section 1, or of an extraordinary resolution from the date of that resolution.

Notice of a special or extraordinary resolution for winding-up voluntarily [but not apparently of a resolution under s. 180 (1)], must be given by advertisement in the Government Gazette, s. 183. Such notice might be in the form, "Notice is hereby given that at an extraordinary meeting of the Co., Ltd. (stating the meeting or meetings, with their dates and place of holding), the following (special or extraordinary) resolution was passed;" and set out the resolution *verbatim*. A copy of the resolution, if special, must be forwarded to the Registrar, s. 85; and it would be clearly advisable to send a copy of an ordinary, or extraordinary, resolution for winding-up to the Registrar in the same way.

The company must, from the commencement of the voluntary winding-up, cease to carry on business except for the purpose of winding-up its affairs; and all transfers of shares, after the commencement of the winding-up, unless made to, or with the sanction of, the liquidators, are void, s. 182. The further consequences of the winding-up are set out in s. 184. A liquidator, or liquidators, must be appointed in general meeting by the company, s. 184 (3); unless under s. 186 the company delegate the power of making that appointment to its creditors, or a committee of them. The appointment may apparently be made at the meeting at which the resolutions for winding-up are passed; though in the case of a special resolution, the appointment must be confirmed at the second confirmatory meeting. And the remuneration to be paid the liquidators must be fixed by the company in general meeting, s. 184 (3). The company may, in general meeting, fill up any vacancy that may occur in the office of liquidator, s. 191; or, if there is no liquidator acting in a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator, s. 192; and the Court may

Chap. III. also, on due cause shown, remove any liquidator, and appoint another, *ib.*

Powers of liquidators.

The liquidators may exercise all the powers given to the official liquidators under the Act, and this without the sanction of the Court, s. 184 (7); at the same time, they may apply to the Court to determine any question arising in the winding-up, and may thus, if they please, obtain the sanction of the Court; s. 189.

Settling list of contributories, s. 184 (8).

The liquidators may themselves settle the list of contributories, s. 184 (8); though in this, as in all other matters in the winding-up, the liquidators or a contributory may apply to the Court for a decision on any question under s. 189.

Calls, s. 184 (9).

They may also make calls, s. 184 (9); and may apply to the Court to enforce the calls under s. 189.

The liquidators may at any time summon general meetings of the company; and are bound to do so at the end of each year, from the commencement of the winding-up, if the winding-up continues for more than a year, and to lay before each yearly meeting an account of their acts and dealings in the winding-up during the preceding year. The liquidators may sanction transfers made after the commencement of the winding-up, s. 182.

Payment of debts of company, s. 184 (1).

They must pay the liabilities of the company in satisfaction of the debts of the company, *pari passu*; and distribute the balance among the members of the company, according to their rights and interests in the company; unless it be otherwise provided in the articles, s. 184 (1). They may, with the sanction of an extraordinary resolution of the company, pay any class of creditors in full, or make such compromise or arrangement with them as they may think fit, s. 210; and such arrangement will bind all the creditors if acceded to by three-fourths in number and value of them, s. 187. And they may, in the same way, compromise calls and liabilities to calls and debts owing to the company.

Compromise, ss. 210, 187.

Dissolution, ss. 193, 194.

When the affairs of the company are fully wound-up, the liquidators must call a general meeting of the company, and lay before the meeting an account of the manner in which the winding-up has been conducted, s. 193. This meeting must be called by advertisement stating the time and place of meeting, and this advertisement is to be published at least a month

previously in the Gazette, and in one or more newspapers Chap. III. circulating in the district where the registered office of the company is situated; *ib.* The liquidators must make a return to the Registrar of the holding of the meeting and the date; and on the expiration of three months from the registration of that return, the company is to be deemed dissolved, s. 194.

The liquidators may, with the sanction of a special resolution of the company, sell its property and business, in consideration of shares instead of cash, s. 212; and in this way and under the authority of this section, may transfer the business of the old company to a new company formed to acquire that business.* Sale to another company, s. 212.

The liquidators or a contributory may apply to the Court to exercise any of the powers which it might have exercised in a compulsory winding-up, s. 189; and amongst these is a power to stay actions, proceedings, and executions brought or proceeded with against the company after winding-up; these may therefore be stayed in a voluntary winding-up, on the application of the liquidators or a contributory, but not of a creditor. Court may stay actions, &c., s. 189.

Notwithstanding a voluntary winding-up, a creditor may apply by petition to the Court for a compulsory winding-up, s. 196; in making such an order the Court may provide for the adoption of all or any of the proceedings in the voluntary winding-up, s. 197.

After the commencement of a voluntary winding-up, the Court may, by order, direct the voluntary winding-up to continue subject to supervision, s. 198. Such an order will be made on the petition of a creditor or a contributory, and may ask for a compulsory order, or, in the alternative, a supervising order. The petition must be served in the same way as a petition for a compulsory order, and also upon the liquidator in the voluntary winding-up, R. 3. Winding-up subject to supervision, s. 198. Petition. Service, R. 3.

The Court, in determining whether a company is to be wound-up compulsorily, or under supervision, is to have regard to the wishes of creditors and contributories, and may direct meetings to be summoned to ascertain those wishes, s. 200.

**Postlethwaite v. Port Phillip G.M. Co.*, 43 Ch. D. 452, is a late case on this subject.

Chap. III. A winding-up under supervision is only a continuation of the voluntary winding-up, and, therefore, commences from the commencement of that winding-up.

**Commence-
ment.**

**Effect of order,
s. 202.** When an order for winding-up subject to supervision is made, the liquidators appointed (who will usually be the voluntary liquidators) have all the powers of liquidators in a voluntary winding-up, and may exercise those powers without the sanction or intervention of the Court, unless the Court otherwise order (s. 202) ; at the same time, the Court has the same power over actions and proceedings, making calls, and in all other respects as in a compulsory winding-up (*ib.*).

**Differences
between three
modes of
winding-up.**

The practical differences between the three methods of winding-up seem to be that, on the one hand, the delay and expense are greater under a compulsory winding-up than under a voluntary one, while, on the other hand, as all the steps in a compulsory winding-up are taken by the direction of the Court itself, fewer mistakes may be made and less litigation caused than in a voluntary winding-up, where the liquidators carry on the winding-up without that direction ; or than in a winding-up under supervision, where they are also usually left with powers equal to those of liquidators in a voluntary winding-up. In cases where vast interests are at stake, where the most ample powers the law has given require to be exercised ; where there have been transactions justifying investigation ; where it may be doubtful whether the property of the shareholders will answer the liabilities, and there is danger to the creditors of the shareholders escaping those liabilities ; in all such cases, a winding-up by the Court ought to be preferred to a voluntary winding-up : see *per* Turner, L.J., *In re Northumberland, &c., District Banking Co.*, 2 De G. & J. 357, at p. 378 ; and though that case was under the earlier "Winding-up Acts," no doubt the same considerations apply under the present Act.

THE NO-LIABILITY MINING COMPANIES ACT.

INTRODUCTION.

Most of the provisions of the "Act to incorporate No-liability Mining Companies," 44 Vict. No. 23 (1881), hereinafter referred to as the "No-liability Act," seem to be derived from the Victorian "Mining Companies Act, 1871," 35 Vict. No. 409. The Victorian enactment is a lengthy statute, on the lines of the "Companies Act," dealing fully with the formation, management, and winding-up of the companies to be formed under it (a). The framers of the N.S.W. statute appear to have chosen a few of the sections of the Victorian Act (unless, indeed, each Act is derived from some common source), and in a very short statute (of eighteen sections) have provided for the existence of mining companies whose members hold shares without any liability for its debts. The brevity of the N.S.W. Act is, however, gained by omitting many sections that might very usefully have been inserted, and thus leaving in doubt the rights and powers of the companies formed under it. In addition to its own provisions, certain sections of the "Companies Act" are adopted into the "No-liability Act"; but they are not of very great value.

The Act contains the following provisions:—

Contents of
"No-liability
Act."

- (1) For the incorporation of companies by registration, ss. 1-6, 13 :
- (2) That shareholders are not to be liable for calls, s. 7 :
- (3) For forfeiture on non-payment of calls, s. 8 :
- (4) For a sort of voluntary winding-up, s. 9 :
- (5) For the incorporation and registration of companies not formed under the Act, ss. 10, 11 :
- (6) For the use of the words no-liability, s. 12 :
- (7) For the making of calls, ss. 14, 15 :

(a) There is a South Australian Act, the "Mining Companies Act, 1881," 44 & 45 Vict. No. 204, closely following the Victorian Act.

(8) For making rules for the management of the company, s. 16 :

(9) That the company shall have a registered office, s. 17 :

(10) That certain sections of the "Companies Act" shall be adopted as part of the "No-liability Act," s. 18.

Sections of the
"Companies
Act."

The most important sections thus adopted are ss. 70, 81, as to meetings, and ss. 82-86, dealing with special resolutions, and the mode of calling meetings and voting in case there are no regulations for those purposes.

Omissions in
Act ;

The Act contains no provisions as to transfer of shares, or for keeping a register of shareholders. It does not define a shareholder, nor does it provide for the increase or the reduction of capital, or for alterations in the nominal amount of each share. The useful section, s. 68 of the "Companies Act," as to the making of contracts, is not adopted or enacted ; and there is no provision for compulsory winding-up.

may sometimes
be met by rules.

Some of the questions raised by the absence of express provision for these matters will be found discussed under various sections of the Act. The rules of the company may, in certain cases, successfully supply the omissions of the Act, as, *e.g.*, in defining a "shareholder," providing for the transfer of shares, and for the keeping of a register of shareholders (see the Model Rules, *infra*) ; but power to increase or reduce capital can be given only by the statute under which a company is formed ; the "No-liability Act" does not give such power, and the omission cannot be supplied by the rules : see note to ss. 6, 16.

Contracts.

In making contracts, a no-liability company is subject to the rule of common law that a corporation can only make contracts (with certain exceptions) under its common seal, though the rigour of this rule has been considerably relaxed : see *South of Ireland Colliery Co. v. Waddle*, L.R. 3 C.P., at p. 469. Section 68 of the "Companies Act," which enables companies under that Act to make their contracts in the same form as individuals may, has not been adopted by the "No-liability Act" ; though s. 87, enabling a company to appoint an attorney to execute deeds, is adopted.

Bills of ex-
change, &c.

It appears that a no-liability company has no power to accept bills or give promissory notes, as such a company is

NO-LIABILITY MINING COMPANIES ACT. 281

formed for mining, not for trading : see *Dickinson v. Valpy*, 10 B. & C. 128.

A no-liability company, like a company under the "Com-
panies Act," will usually commence its operations by issuing a Formation, prospectus.
prospectus, and the remarks already made on the subject of
prospectus, and the formation of a company, apply generally
to no-liability companies.

But it may be here observed that the Act seems to contem-
plate the existence of a company with shareholders, mine and Act contem-
plates existing
company.
machinery, money at its credit, &c., before registration : see the
statements in the second schedule. On the other hand the rule
of law is that a corporation cannot be bound by, and cannot
ratify, contracts made on its behalf before it has any existence :
Re Empress Engineering Co., 16 Ch. Div. 125. And how can a
non-existent company in any sense own machinery, or agree to
issue shares ? It can only be that these matters must
be undertaken by trustees on behalf of the proposed
company. Yet it seems very advisable that as few matters
as possible should be carried out in this way ; and
although s. 2 is imperative that the statements in the Second
Schedule shall be made, yet there does not appear to be any
obligation that there should be, *e.g.*, any money at the company's
credit or that the company should actually have any plant or
machinery ; but a true statement must be made in regard to
these circumstances. The second statement in the Schedule is of
the "place of operations or intended operations ;" from which
it may be inferred that the mine need not be in actual operation.
Further, the eighth statement in the Schedule seems to con-
template that all the contributing shares need not be subscribed
before registration. The inference seems to be that a very few
shareholders, say four or five, might form themselves at once
into a no-liability company, and subsequently issue a prospectus,
allot shares, make rules, &c., providing in the rules for the issue
of the remaining shares ; and this plan would greatly simplify
in practice the necessary steps in the formation of the company,
inasmuch as there would probably be no difficulty in procuring
the attendance at meetings of all the shareholders, and so
unanimously making rules, appointing directors, &c. At the

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same time, no such device can overcome the legal difficulty of conceiving the existence of any shareholders at all before the formation of the company; and it must be confessed that it appears almost impossible to fulfil strictly this and other requirements of the Act, which are made conditions precedent to registration.

S. 69 of the
"Companies
Act" adopted.

Whether the prospectus is issued by provisional directors or by the company itself, it must be remembered that s. 69 of the "Companies Act" is adopted by the "No-liability Act"; so that the prospectus must show the names and dates of any contract entered into by the company or its promoters, directors, or trustees; and the validity of any clause in the prospectus waiving notice of any contracts seems very questionable. Either before the issue of the prospectus, if the plan above suggested be adopted, or subsequently, some person acting as manager of the proposed company must make the statements required by s. 2, in the form given in the Second Schedule to the Act. The section is imperative that the statements shall be made; but the Act does not seem to require that the company (or anyone on its behalf) shall possess a mine, machinery, &c., but only that a true statement should be made regarding them. On the other hand, the Act imperatively requires that ten per cent. of the subscribed capital shall be paid-up (as to this see note to s. 2). The statements in the second schedule must be verified by statutory declaration of the manager (s. 2), and the memorandum and declaration must be lodged in the office of the Registrar-General.

Memorandum,
s. 2.

Verified by
declaration.

Within seven days of such lodgment, a copy of the memorandum and declaration must be published in one or more than one newspaper circulating in the district in which the company's operations are being or to be carried on; and a copy of the memorandum and declaration must also be sent to the Government Gazette for publication.

Newspapers,
&c., to be filed
with Registrar.

Copies of the newspapers in which publication has been made, and of the Gazette, and also of any rules proposed to be made by the company, must then be sent to the Registrar's office.

Registration,
s. 3.

The Registrar, upon receipt of these, enters in his register-book the date of receipt; and then writes at the foot of the

copy of the memorandum (lodged under s. 2) a statement in the form given in s. 3, to the effect that the company was registered on the date there mentioned. This statement must be signed by the Registrar-General, and the company is then registered (s. 3); and, by s. 6, a company when registered becomes incorporated.

Registration, and consequent incorporation, is by s. 4 Certificate, s. 4. conclusively proved by a certificate; and see notes to that section.

By s. 70 of the "Companies Act," adopted by s. 18, a company First meeting to be held within four months. under the "No-liability Act" must hold a meeting within four months after registration. And clearly, apart from this section, the manifest convenience of the company is to hold a meeting as soon after registration as reasonable notice can be given to the members; such notice should apparently be seven days' notice, Notice. given to each member either personally or by letter prepaid and posted (s. 84, "Companies Act;" see note to Rule 31, *infra*). At this meeting the rules under which the company is to work should be adopted by a majority in number and value of the shareholders (s. 16, and see note thereto); and it appears that proxies cannot be used at such a meeting. No right to vote by Votes by proxy. proxy is given by the Act except in connection with s. 9; such a right can only be conferred by the rules, and cannot, therefore, exist until the rules have themselves been adopted: see a Victorian decision to that effect, *Higgett v. Sun Q.M. Co.*, 4 A.J.R. 119. Directors will also at this meeting be appointed, and contracts previously entered into on behalf of the company should now be entered into by the company (as they cannot be merely ratified); and the manager should be appointed, though these matters may be left to the directors if within the scope of their powers conferred by the rules.

An Act to incorporate No-liability Mining Companies.

[Assented to, 31st March, 1881.]

BE it enacted by the Queen's Most Excellent Majesty, by 44 Vict. No. 23. and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales, in

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Sect. 1. Parliament assembled, and by the authority of the same as follows:—

No-liability system.

1. Companies may be incorporated by registration under this Act for mining purposes, on a system to be called "The No-liability System," and every company so incorporated shall add after the name the words "No liability."

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), Part IV., s. 116.

Mode of obtaining registration.

Second Schedule.

2. In order to obtain such registration, it shall be necessary that ten per cent. of the subscribed capital (a) shall be paid-up, and there must be lodged in the office of the Registrar-General a memorandum, signed by some person as the manager of such company, which shall contain the several matters, and may be in the form contained in the Second Schedule hereto. The said memorandum must be verified by a statutory declaration of the person so signing as manager, containing the statements and made in the form of the said schedule. Within seven days after the day of such lodgment a copy of the said memorandum and declaration shall be published in one or more than one newspaper circulating in the district in which the company's operations are being or to be carried on, and a like copy shall be forwarded to the office of the Government Gazette for publication therein, and which, on the proper payment being made therefor, shall accordingly be therein published. As soon after such publication as the same can be done, copies of such newspapers, and also of the said Government Gazette and of any rules proposed to be made by such company, shall be forwarded to the office of the said Registrar-General, to be there retained and filed with the said memorandum.

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), s. 118 (1) (2), and s. 6.

"Subscribed capital."

(a) This phrase "subscribed capital" does not seem to occur in the "Companies Acts." The word capital (as used in the "Companies Acts") may have any one of at least three meanings: (1) Nominal capital—the amount named in the memorandum of association: (2) Issued capital—part of the nominal capital actually issued: (3) Paid-up capital—the total amount paid on the issued capital: (Buckley, p. 511). The word "subscribed" appears to be commonly used in the sense of "applied for, and agreed to be issued," and it is conceived that "subscribed capital" means "share capital applied

for, and agreed to be issued." The requirement of the section, "that ten per cent. of the subscribed capital shall be paid-up," will be satisfied if, e.g., 10,000 out of 100,000 shares applied for, and agreed to be issued, are fully paid-up; no shares can be actually issued, as the company is as yet unformed; or, to take another instance, if the nominal capital of the company were £100,000, in 100,000 shares of £1 each, and only 50,000 of them were agreed to be issued, but of these 5000 were fully paid-up, then ten per cent. of the subscribed capital would be paid-up; or, in either of these cases, the Act would be satisfied if two shillings in the pound on each subscribed share were paid. This view seems to some extent borne out by the terms of the memorandum in the second schedule, paragraphs (7) and (8) of which seem to contemplate such a case as that last suggested. It must, however, be admitted that reading paragraphs (8) and (11) together, the idea of the framers of the Act seems to have been that contributing shares only are capital subscribed for; inasmuch as paragraph (8) first mentions subscription, being a statement that the number of "contributing shares subscribed for is" so many; while paragraph (11) states that "ten per cent. of the subscribed capital has been duly paid up." Yet it is submitted that there is no warrant for any such distinction, and that shares agreed to be issued in any form, as, e.g., paid-up, are as much subscribed for, and are to be as much described as subscribed capital, as contributing shares; and that the meaning of the requirement is that suggested and in accordance with any one of the instances given above.

Sect. 3.

Ten per cent.
paid up.

As has been before pointed out, the agreement to issue and the payment cannot be by and to the company, which is as yet non-existent, but must be by and to someone on its behalf, as a trustee for the intended company. Can there be an application for shares, accompanied by a payment in money's worth, as by conveyance of land held under some "Mining Act" to the company? It is conceived that there can, and that shares will be regarded as paid-up if so paid for. Such a payment was held good in the case of limited liability companies under the English "Companies Act, 1862," before s. 25 of the English "Companies Act, 1867," (corresponding to s. 57 of the N.S.W. "Companies Act") was enacted: see *Drummond's Case*, 4 Ch. 772; *Pell's Case*, 5 Ch. 11; and there is no section resembling s. 57 in the "No-liability Act." And the fact that this payment must be made to, and the agreement to issue shares is made by a trustee for the company, raises no greater difficulty than in the case of a cash payment; in either case, the contract to issue shares must be novated by the company after registration.

Subscription
must be to
trustees.

Payment other
than in cash.

3. The Registrar-General shall keep a Companies Register Book, to be entitled the "No-liability Mining Companies Register Book"; and on receipt by him of the said newspapers, Government Gazette, copies and copy of rules (if any), he shall enter the date of such receipt and shall write and sign at the foot of the copy of the memorandum so lodged the words "The above No-liability Mining Company was registered by me on the day of eighteen hundred and by the name of 'The Company No-liability,'" and upon such

Registration
effected by
Registrar-
General.

Sect. 4. writing being signed by the Registrar-General, the said No-liability Mining Company shall be deemed to be registered under this Act.

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), s. 118 (3) and s. 7.

Proof of registration.

4. A certificate, in the form or to the effect in the First Schedule to this Act, purporting to be under the hand of the Registrar-General (who is hereby required to give such certificate to any person applying for the same, on payment of one shilling), and which certificate shall describe the Government Gazette and copy of their respective dates, and the newspapers by their respective names and dates, shall be conclusive evidence in all Courts that the company has been duly registered under the provisions of this Act, and of the time of its registration.

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), s. 10.

Copy means copy of rules.

"Copy" seems to mean copy of the rules, if any such be filed; see the form of certificate in the First Schedule hereto, and the "Victorian Mining Companies Act, 1871," s. 10.

Effect of certificate.

The corresponding section of the Victorian Act above-mentioned, is in words in this respect identical with this section, enacting that the "certificate shall be conclusive evidence in all Courts that the company has been duly registered under the provisions of this Act," and by s. 8 of the same Act upon registration the persons named in the memorandum become a body corporate. By s. 118 of that Act it is necessary that 5 per cent. of the subscribed capital shall be paid-up prior to registration. Under these sections in a case where the certificate was produced, but it was also shown that 5 per cent. of the capital had not been paid-up before registration, it was held that the company was not duly incorporated: *Park Co. v. South Hustlers Reserve Co.*, 9 V.L.R. (M.) 4, per Molesworth, J.; although a certificate under an earlier statute seems to have been held conclusive in *A.-G. v. Prince of Wales G. M. Co.*, 5 W.W. and A.B. (E.) 208; again, in a very late case, the point was taken, but not decided: *Robertson v. Wealth of Nations G. M. Co.*, 14 V.L.R. 584. It is, however,

Is conclusive.

submitted that the certificate is "conclusive evidence" as the statute enacts. The words of the section are very strong; the certificate is made "conclusive evidence in all Courts that the company has been duly registered under the provisions of the Act." The argument against this construction appears to be that the fact of 10 per cent. of the capital being paid-up is a condition precedent to the right of the company to obtain registration; that if such amount was not in fact paid-up "the company was not authorised to be registered, and the certificate of registration is of no avail." If this be the case, these words of Turner, L.J., in *Re Northumberland District Co.*, 2 De G. & J. 357, may apply, and it may be possible to go behind the certificate on this ground, and by like reasoning on other grounds of non-fulfilment of the conditions mentioned in s. 2. It would be of the gravest consequence if a company supposed to be properly registered were on any ground to find its

registration regarded as bad, and its members to be without the protection afforded by the Act, and which they supposed they possessed. There are, however, English decisions on the effect of a certificate under the "Companies Act, 1862," which seem in conflict with the Victorian decision, and perhaps with the dicta of Turner, L.J., in *Re Northumberland District Co., sup.*

In this latter case a banking company registered itself under the powers conferred by s. 6 of the Act, 20 & 21 Vict. c. 49, which Act incorporated with itself the "Joint Stock Companies Acts, 1856, 1857." By s. 13 of the "Joint Stock Companies Act, 1856," 19 & 20 Vict. c. 47, the certificate of incorporation given by the Registrar was declared to be conclusive evidence that all the provisions of the Act in respect of registration had been complied with; nevertheless, Turner, L.J., refused to regard the certificate as conclusive, and considered at length the question whether the company was entitled to be registered, and whether the conditions laid down in s. 6 of the first-mentioned Act had been fulfilled, holding that they had been so fulfilled; while Knight Bruce, L.J., held that they had not been fulfilled, and that the registration was void.

Where a petition to wind-up an unregistered company under the "Companies Act, 1862," had been presented, and afterwards, and before order made, the company was registered; after order made, Malins, V.C., held that "unregistered company" meant a company unregistered at the date of the presentation of the petition, and that the subsequent registration was a mere nullity: *In re Hercules Insurance Co.*, 11 Eq. 321; but no one seems to have appeared in support of the registration. On the other hand, in *Oakes v. Turquand*, L.R. 2 H.L. 325, Lord Chelmsford said, at p. 354, "I think the certificate (under the Act of 1862) prevents all recurrence to prior Acts essential to registration . . . and that it is conclusive in this case that all previous requisites have been complied with;" and with this opinion the other Lords who gave judgment agreed. And so it was held, almost at the same time as that decision, in *Re BARNED'S BANKING CO.*, 2 Ch. 674, Cairns, L.J., saying "it would be of most disastrous consequence if" (after registration, &c.) "any person was allowed to go back and enter into an examination (it might be years after the company had commenced trade) of the circumstances attending the original registration, and the regularity of the execution of the document originally received by the Registrar;" and the Lord Justice held the certificate conclusive evidence of the registration, although, in his opinion, the alteration made in the memorandum entirely neutralised and annihilated the original signature of that document.

The case of *The Princess of Reuss v. Bos*, L.R. 5 H.L. 176, is not a very strong authority in favour of the conclusiveness of the certificate. Although the House of Lords held that the company whose registration was in dispute was validly registered, yet that question was not decided on the mere production of the certificate, but the whole question of the right of the company to be registered was gone into; the argument being that "the 'Companies Act' was not intended to apply to a case like this." In the subsequent case of *In re Nassau Phosphate Co.*, 2 Ch. D. 610, Hall, V.C., held that the certificate of the Registrar under the "Companies Act, 1862," was conclusive that the parties (meaning, apparently, to the memorandum) had become an incorporated body; and in *Glover v. Giles*, 18 Ch. D. 173, Fry, J., held that he could not inquire into matters preliminary to the granting of a certificate of incorporation under the "Building Societies Act, 1874," but the society must be taken to be incorporated.

It is suggested that the conclusion to be drawn from a consideration of these

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Sect. 5.

cases is that a company may be always open to the inquiry whether it is or is not within the scope of the Act; whether, *e.g.*, it is a company formed for mining purposes, or to mine within the colony (see note to s. 6); but that it is not open to any Court to set aside the registration and consequent incorporation of a company, if a certificate have in fact issued, on the ground that any of the requirements preliminary to registration mentioned in s. 2 have not been complied with. It seems impossible to hold that if a company, ostensibly formed for purposes other than mining, by some means procured a certificate of registration under this Act, that certificate would be binding, and would relieve the members of the company from liability. And by like reasoning it may be doubted whether a company formed to mine lands in other countries or colonies is well formed under this Act, the whole aim of which seems to be directed at companies formed to mine lands in this colony. For instance, the power conferred by s. 6 is "to hold lands under any Act now or hereafter to be in force relating to mining"; which can hardly refer to Acts of other countries; and s. 17, compelling companies under the Act to have a registered office in the colony, seems intended to compel people of other colonies who might desire to take advantage of the Act and mine lands in this colony to come within the jurisdiction of our Courts.

Copies of
Government
Gazette to be
evidence of
shareholders.

5. Any copy of the Government Gazette described in such certificate as aforesaid shall be *prima facie* evidence that the persons named therein as shareholders in any such mining company are such shareholders.

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), s. 11.

It is difficult to see the value of this section; a similar one is found in the "Victorian Mining Companies Act" (No. 409), s. 11. Its effect appears to be that the list of shareholders named in the Gazette at the time of the formation of the company is to remain evidence through the whole course of the company's existence that a person named therein is a shareholder, though his shares may have passed through any number of hands; and the Act contemplates transfer (see next section). It was probably intended to take the place of the provision of the "Companies Act" which declares that the persons signing the memorandum of association shall be members of the company: (s. 21).

Incorporation
of company.

6. Upon the registration, the persons whose names shall be contained in the said memorandum, together with such other persons as may thereafter from time to time become members of the company, shall be a body corporate by the name contained in such memorandum, capable forthwith of exercising all the functions of an incorporated company, and having a perpetual succession and a common seal, with power to hold lands for mining purposes under any Act now or hereafter to be in force relating to mining, and be capable of suing and being sued in its corporate name.

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), s. 8.

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This section and s. 7 evidently contemplate a change of membership in the company by transfer of shares; though it is to be observed that it is nowhere expressly enacted that shares shall be capable of transfer; transfer should in any case be regulated by the rules.

Sect. 6.

Transfer contemplated.

The body corporate formed under the Act is to be "capable of exercising all the functions of an incorporated company"; but it is submitted that this must be taken to mean within the scope and subject to the express and implied limitations of this Act, under which the corporation exists. On this point it is useful to consult the leading case on the subject of the powers of a limited company under the "Companies Act, 1862," the case of *Ashbury Railway Co. v. Riche*, L.R. 9 Ex. 224; and on appeal to the House of Lords, L.R. 7 H.L. 653. Section 18 of that Act, corresponding to s. 17 of the N.S.W. "Companies Act" (*supra*), contains the same words as those above quoted; and it was held by some of the Judges who considered the *Ashbury Company's Case* that a corporation, i.e., a company, formed under that Act, had the powers of an ordinary corporation at common law, and could therefore bind itself under its seal to anything to which a natural person could bind himself; see the judgment of Blackburn, J., in Exchequer. But it was held in the House of Lords that "the incorporation of a company with limited liability is entirely a creature of the statute. It was necessary, not only for the protection of those who might join such companies, but also of persons who might enter into contracts with them, that the privilege of creating them should only be obtained upon certain conditions, which should be made known to the public": *per* Lord Chelmsford, L.R. 7 H.L. at p. 678; and the judgment goes on to refer to the memorandum in which the objects of the company are to be set out. There is a memorandum also filed under the Act now under discussion, though it must be admitted that in many respects it does not correspond to that under the "Companies Act." But apart from the memorandum, Cairns, L.C., at p. 673, quotes with approval (except as to the word "illegal") the words of Blackburn, J.: "I do not entertain any doubt that if, on the true construction of a statute creating a corporation, it appears to be the intention of the Legislature, expressed or implied, that the corporation shall not enter into a particular contract, every Court, whether of law or equity, is bound to treat a contract entered into contrary to the enactment as illegal, and therefore wholly void, and to hold that a contract wholly void cannot be ratified."

Powers of No-liability company.

Ashbury Co. v. Riche.

And in a subsequent case, *Attorney-General v. Great Eastern Railway Co.*, 5 App. Cas. 478, Lord Blackburn said, "That case" (i.e., the *Ashbury Co. v. Riche*) "appears to me to decide at all events this, that where there is an Act of Parliament creating a corporation for a particular purpose, and giving it powers for that particular purpose, what it does not expressly or impliedly authorise is to be taken to be prohibited." So that in considering the powers of a corporation formed under a particular Act of Parliament, the limitations expressly or impliedly imposed by the Act are to be looked at; although within those limitations the Act may leave it to the company itself to define its powers, as, e.g., by its memorandum of association under the "Companies Act." By this 6th section the incorporated company is to have "power to hold lands for mining purposes under any Act now or hereafter to be in force relating to mining;" there is no express power to hold land generally, and it is therefore to be inferred that a company under this Act has no power to hold lands except under the provisions of some Act relating to mining, and for mining purposes only; such a company has no power to hold ordinary freehold land. Further,

Powers limited by Act.

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Sect. 7. it is to be inferred from this section, and seems to be contemplated by the whole intent of the Act, that the operations of the company are to be within New South Wales; see note to s. 4, where it is suggested that a company cannot be legally formed under this Act to mine lands in other colonies. Even if a company could be so formed, it would still be a question whether a corporation formed in one country can hold lands in another; the answer to that question depending on the laws of the country in which the land is situated.

The power of a no-liability company to increase or reduce its capital is discussed under s. 16.

Shareholders
not liable to
calls or con-
tributions.

7. The acceptance of a share in any mining company registered as aforesaid, whether by original allotment or by transfer, shall not be deemed a contract on the part of the person accepting the same to pay any calls in respect thereof, or any contribution to the debts and liabilities of the company, and such person shall not be liable to be sued for any such calls or contributions, but he shall not be entitled to a dividend upon any share upon which a call shall be due and unpaid.

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), s. 117.

This section again mentions transfer of shares, which is evidently contemplated by the Act, though no express provision is made for it. The rules of the company should declare the mode of transfer, which may conveniently be (as in the suggested Rules 14, 15, *infra*) by writing, signed by both transferor and transferee.

*Toohy v.
McCulla.*

This section exempts a shareholder from liability to pay calls or contributions in respect of his shares; but it not infrequently happens that directors incur expenses for the working of the company's property, either in actual payment out of pocket, or by borrowing from a bank on their personal liability, or in other ways; and such expenditure and liability may be assented to and sanctioned by the shareholders. Under such circumstances the shareholders who have so assented may be liable to contribute in respect of such liabilities. Directors of a company had obtained an overdraft from a bank for the purpose of carrying out the objects of the company, and gave their personal bond to secure repayment, and these facts were shown by the report which was read and adopted at a meeting at which one Lynch, a shareholder, was present, and he offered no objection; and at a subsequent annual meeting, Lynch moved the adoption of a report showing the existence of the overdraft. The overdraft was subsequently paid off by certain directors, and they brought suit against Lynch's executrix (amongst others) for contribution in respect of this payment. It was held by Owen, Chief Judge in Equity, that under the circumstances Lynch must be taken to have sanctioned and ratified the acts of the directors; and that, therefore, he was liable to contribute to repay the directors the moneys they had so expended: *Toohy v. McCulla*, 10 N.S.W.L.R. Eq. 264; following *s.p. Chippendale*, 4 De G. M. & G. 19. The company in this case appears to have been registered under the "Companies Act," but the liability of the defendants was said to "rest on a principle of equity quite outside company law"; and the same principle would apply to transactions of a no-liability company; so that shareholders may, under similar circumstances, find themselves liable in spite of the provisions of the Act.

8. Any share upon which a call shall, at the expiration of Sect. 8.
 twenty-eight days after the day for its payment, be unpaid, shall Forfeiture of
shares.
 thereupon be absolutely forfeited without any resolution of
 directors or other proceeding. The share when forfeited shall be
 sold by public auction advertised in two issues of a newspaper
 circulating in the district where the company's mine is situated,
 and in two issues of a daily newspaper published in Sydney, the
 last of such advertisements being not less than fourteen days
 before the day appointed for the sale; and every such advertise-
 ment shall state the number in the company's share list of each
 share so forfeited; and the proceeds shall be applied in payment
 of the call unpaid thereon, and of any expenses necessarily
 incurred in respect of the forfeiture, and the balance (if any) shall
 be paid to the shareholder on his delivering to the company the
 scrip representing the forfeited share; and new scrip may be
 issued by the directors for such forfeited shares in the place of
 the scrip forfeited and cancelled by the sale aforesaid

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), s. 118 (5).

Calls are to be made in such manner as to be payable on the second Wed-
 nesday in the month, and on that day only (s. 14); and the only notice of the call
 having been made which is required by the Act is by advertisement as directed by
 that section. Provision should, however, in favour of shareholders be made by the
 rules for notice to be given by letter to each shareholder; and, afterwards, if the
 call be not paid, for a second notice, before the expiration of the twenty-eight days
 named in this section. But although it seems very advisable that the shareholders Rules should
provide for
notice of calls.
 should, by their rules, provide for such notice, it seems doubtful whether non-
 compliance with such rules on the part of the manager or directors would save the
 shares from forfeiture, that is to say if the call were validly made. The provision
 of this section is imperative that any share on which a call is unpaid at the expira-
 tion of 28 days from the day fixed for its payment shall be absolutely forfeited
 without any resolution of the directors or other proceeding; and the power to make
 rules conferred by s. 16 is to make rules not inconsistent with the Act, so that if
 once a call is validly made, that is to say in accordance with the rules of the
 company, and a day (which must be the second Wednesday in the month) fixed for
 its payment, and the provisions of s. 14 as to advertisements carried out, no rule
 can be effective to prevent the forfeiture under this section if the call be unpaid.

The section further enacts that the shares so forfeited shall be sold by public Sale of forfeited
shares.
 auction after certain advertisements have been published, and the directions as to
 such advertisements should be strictly followed, even though one direction is that
 the advertisement shall state the number in the company's share list of each share
 so forfeited, which must make advertising a very burdensome business, if the
 number of forfeited shares is large.

It is difficult to say what the result of non-compliance with these directions would Effect of not
obeying section.
 be; it may be that such a sale would be bad and give a bad title to the shares to
 the purchaser; but it could hardly lie in the mouth of the company to set up their

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Sect. 9. own neglect to avoid the sale. The holder of the forfeited shares can have nothing to say to it, as his shares are by statute forfeited and gone after the 28 days; the purchaser might, perhaps, refuse to carry out his bargain on discovering after the sale an omission in the preliminary notices.

It is to be observed that there is no *locus penitentiae* for the holder of the forfeited shares to come in and pay his calls before the sale and so retain his shares; nor, considering the imperative nature of the words of the section, does it appear possible to make any provision to that effect by the rules. The Victorian "Mining Companies Act, 1871" (No. 409), by sec. 56 allows the shareholder to redeem his shares on certain terms up to the day before the day of sale, a provision that might well have been adopted into the N.S.W. Act.

The proceeds of the sale are to be applied in payment of the unpaid call, and of any expenses necessarily incurred in respect of the forfeiture, and the balance is then to be paid to the shareholder on his delivering up the scrip representing the forfeited share. Are the expenses attending the sale, such as those incurred in advertising expenses, incurred in respect of the forfeiture? If such were the intention of the framers of the Act, it is submitted that that intention has not been clearly expressed; the forfeiture is complete on the 28th day, and before advertisement and sale, but no doubt the proposition may be supported that the subsequent expenses are necessarily incurred in respect of the forfeiture, since the Act declares that sale must follow forfeiture.

New scrip for forfeited shares

New scrip may be issued for the forfeited shares in place of the scrip "forfeited and cancelled by the sale as aforesaid." This clause follows that referring to the delivery up by the old shareholder of his scrip, but it cannot be supposed that the purchaser of the forfeited shares is to wait for that event before he is entitled to new scrip; the meaning must be taken to be that the sale forfeits and cancels the scrip for the forfeited shares, and thereupon new scrip may issue.

Winding-up of no-liability company and other proceedings thereon.

9. The procedure upon dissolution and winding-up of a company registered under this Act shall be as follows, viz. :—Where it is intended that any such company shall be dissolved, it shall be necessary in the first place for the directors thereof to summon a special meeting of the shareholders, of which not less than fourteen days' notice shall be given in the Government Gazette and in one or more daily newspapers (if any), circulating in the district where the company's mine is situated, and at such meeting not less than one-third in number and value of the shareholders shall be represented in person or by proxy; and if, at such meeting, a majority shall decide in favour of dissolution, it shall be incumbent upon the directors to present a petition from the manager of the company to the Chief Commissioner of Insolvent Estates setting forth the facts accompanied by an affidavit to the effect that all the liabilities of the company have been discharged, and praying for a dissolution of the said company; and if no such quorum attend such meeting the directors shall be at liberty to present such

petition as aforesaid. If such Commissioner shall be satisfied Sect. 9. therewith and of the fact that there are no liabilities, he may make an order that such company shall be dissolved from the date of such order, and it shall be dissolved accordingly. And he may also by such order direct how the assets (if any) of the said company are to be distributed, and how all the books, papers, and documents connected therewith are to be disposed of. But any such order or direction shall be subject to appeal to the Supreme Court at the instance of any person aggrieved by such order or direction in the same manner as nearly as practicable as any order or direction in insolvency of the said Commissioner is now or may hereafter be by law subject to appeal.

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), part II.

By s. 127 (2) of the "Bankruptcy Act, 1887," the Judge in Bankruptcy is substituted for the Chief Commissioner of Insolvent Estates.

This section provides for a voluntary winding-up of the company, and the Act contains no provision for any other method of winding-up. But it is submitted ^{Winding-up under "Companies Act."} that the company can be compulsorily wound-up as an unregistered company under Part VII. of the "Companies Act," s. 243 of which makes any company consisting of more than seven members and not registered under that Act, hereinafter included under the term unregistered company subject to the provisions of that part. These words are very wide, and certainly include in their plain meaning a company such as one under this Act; and it has been said by the Full Court here that it is established that the words unregistered company in that section mean companies not registered under the "Companies Act," but include companies which are, or may be, registered under any other Act providing for registration: *In re Grand United G.M. Co.*, 10 N.S.W. L.R. Eq. 269. That was a case of a creditor's petition to wind-up the company as unregistered under the "Companies Act," and the Court held it could be so wound-up, although a means of winding it up in the District Court is provided by the Act under which the company was registered, the "Mining Partnerships Act." And the case seems stronger in favour of holding that a company under the "No-liability Act" may be similarly wound-up; since the only provision in the "No-liability Act" itself is contained in the above section providing only for a sort of voluntary winding-up; and a corporation cannot be made bankrupt ("Bankruptcy Act, 1887," s. 109), so that an unsatisfied creditor might be left wholly without remedy. A few cases in the English Courts can be cited against this view, each of which turn on their special circumstances. In *Re London India Rubber Co.*, 1 Ch. 329, the company was registered under the "Joint Stock Companies Act" previously to the "Companies Act" of 1862, and by s. 176 of this latter Act its provisions are made to apply "subject as hereinafter mentioned" to companies formed and registered under the previous Acts. The Court seem to have found it difficult to apply a meaning to the proviso, and held that "for the present it may be taken as an absolute declaration that this Act shall apply to companies formed and registered under the former Acts." That was not expressly a decision on s. 243 (Eng. s. 199) of the "Companies Act," and if it impliedly put a narrow construction on s. 199, it was in the endeavour to ^{Grand United Co.'s case.}

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give a proper application to the express words of s. 176, and there is no section corresponding to s. 176 in the N.S.W. Act. In several cases of industrial and benefit societies, it was held that they should be wound-up under their own Acts: see *Re Chatham Co-op. Society*, 10 Jur. N.S. 983, in which case Wood, V.C., seems to have grounded his decision, refusing an order under the "Companies Act," on the fact that the Legislature had passed an Act providing for the winding-up of such societies, in the same session as the "Companies Act" was passed, and could not be taken to have intended that the provisions of the "Companies Act" should apply to such cases. If that case can now be supported, it may at any rate be said that the reasons of the judgment cannot apply here, and in face of the express decision of our Courts, in the case of the *Grand United Co.*, it is submitted that a no-liability company may be wound-up under the above-mentioned provisions of the "Companies Act."

Advertisement
in daily paper.

Throughout the Act the Legislature was careful to avoid providing for any advertisement in a daily newspaper in the district where the mine is situated; but this section requires publication in one or more daily newspapers (if any) circulating in the district where the company's mine is situated. It will be the safer plan to advertise in any paper that can possibly fall within this description; if there be none such, then, as publicity is presumably required, in some other paper, not a daily, if such exist.

Previously
registered
companies may
be registered as
no-liability
companies.

10. Any registered or unregistered company formed for mining purposes previously to the passing of this Act may, with the consent of a majority in number and value of the shareholders in such company present in meeting personally or by proxy, and with the consent in writing of all the creditors (if any), be incorporated as a no-liability mining company; but in any such case the memorandum hereinbefore required by the second clause shall distinctly state the consent of such majority, together with the place and date of holding such meeting; and the consent in writing of the creditors shall be lodged with the Registrar-General together with such memorandum.

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), ss. 121-126.

"Majority in number and value" is a phrase to which it seems difficult to attach a meaning, at any rate in the case of companies having shares, some of them fully paid-up, others not; see note to s. 16.

On the registra-
tion as a
no-liability
company
liability of
shareholders
to cease.

11. On the registration of any such company as a no-liability mining company all liabilities of the shareholders for calls shall from thenceforth cease. In the event of the winding-up of such a company the shareholders shall not be bound to contribute to the debts or liabilities of the company contracted after such registration. Provided always that, notwithstanding such registration, any person having any claim or demand in respect

of any contract which shall have been made or happened before such registration shall have the same remedy as if such registration had not taken place. **Sect. 14.**

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), s. 123.

12. Any manager or agent of a no-liability company ordering goods, plant and other necessaries for the purposes of the company shall do so on paper bearing the company's name, with the word "No-liability" added, together with the word "No-liability" inscribed in coloured ink across such order. Provided that if goods be ordered otherwise than aforesaid the person ordering the same shall be personally liable.

The manager or agent of a no-liability company to order goods, &c., on paper.

13. A no-liability company shall be deemed duly registered under this Act notwithstanding any error in the name, address, or occupation of a shareholder.

Registration not affected by reason of error in name, address, or occupation of shareholder.

This section introduces an uncertainty into the Act, which it was probably expressly intended to avoid. By s. 4 the certificate of the Registrar is to be conclusive evidence that the company has been duly registered. The effect of that provision has already been discussed in the note to that section, and it has been suggested that it prevents recurrence to any act prior to its issue for the purpose of showing its irregularity. This section raises the question whether errors in the memorandum, other than in the name, address, or occupation of a shareholder, invalidate the registration. It is submitted that they do not; and that the argument derived from the maxim *expressio minus exclusio alterius*, cannot be carried so far as to do away with the effect of the very strong wording of s. 4.

14. The calls upon shares in every company registered under this Act shall be made in such time and manner as they shall be payable on the second Wednesday in a month and on that day only: Provided that if such Wednesday is a public holiday they shall be payable on the following day, such day not being less than seven days from the day on which the call shall be made. A notice shall be printed on the face of the company's scrip stating that that day is the day on which calls are payable. When a call shall have been made, notice of the day when it will be payable and of the place for payment thereof shall be published in the Government Gazette, in a daily newspaper published in Sydney, and in one or more papers circulated in the locality wherein the company's mine is situated.

Calls to be due on the second Wednesday in any month.

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), s. 50.

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Following the ordinary rules of construction the words "such day" seem to refer to the words "following day" immediately antecedent; though no doubt both "such day" and "that day" in the subsequent sentence were intended to refer to the second Wednesday in the month. If "such day" refers only to the "following day" previously mentioned, the result will be that the section provides for the day of payment being not less than seven days from the day of call being made only when the second Wednesday in the month is a public holiday and the day of payment therefore falls on the following day, but makes no such provision where the day of payment is the usual one, the second Wednesday in a month.

It has already been suggested that in addition to the notices required by this section to be given, provision should be made in the rules for notice to be sent by post to each shareholder; see note to s. 8, and Model Rules, *infra*.

A call will be "made" on the day when the resolution to make it passes the Board of Directors, provided the amount of the call and the date of payment are then fixed: *In re Cawley & Co.*, 42 Ch. Div. 209. Probably in the ordinary course of things more than seven days will have to be allowed between the day of the making of the call and the day for its payment, in order to allow time for the advertisements required by the latter part of the section to be published.

No call to be made until previous call paid.

15. When a call shall have been made no subsequent call shall be made until after the expiration of fourteen days from the day when the call so made shall be payable.

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), s. 51.

Company may make rules, &c.

16. The majority in number and value of the shareholders in any no-liability company may, from time to time after incorporation, make and alter rules for the appointment or election of directors, auditors, and other officers of such company, for regulating the power and duties of such directors and officers, for the conduct of the business at meetings of the Board of Directors, and generally for the management and purposes of the company not inconsistent with this Act; and such rules shall be binding on the company. A copy of every rule made or altered by a no-liability company shall, immediately after the making or altering thereof, be filed at the Registrar-General's office.

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), s. 58.

Rules to be made after registration.

One of the first duties of a company after its formation will be to make rules for its guidance; and for that purpose it has already been suggested that a meeting of the company should be held as soon as possible after registration, the meeting being summoned in accordance with s. 84 of the "Companies Act," adopted by s. 18 of the "No-liability Act"; see note to Rule 31, *infra*. At such a meeting, and at all meetings which propose to make, or alter, any rules of the company, it will be a question what number of votes is necessary to give

validity to such rules. Setting aside for the present the difficulty introduced by the adoption by s. 18 of this Act of ss. 82, 83, of the "Companies Act," s. 16 enacts that the "majority in number and value" of the shareholders may make rules. This appears to mean that the majority in favour of any rule must be, as to numbers, an actual majority of the members of the company; the presence of such a majority might, perhaps, be readily secured by the use of proxies at subsequent meetings, if proxies are provided for by the rules; but at the first meeting, which must necessarily be before the rules exist, it seems clear that proxies cannot be used; see the introduction to the Act, *supra*.

Sect. 16.

Majority in number and value.

Rules can, accordingly, only be first made by an actual present majority. If, however, the rules themselves give a right to use proxies, there appears to be nothing in the statute to make their subsequent use illegal.

The majority must be in "number" of the shareholders, a phrase which presents no difficulty; and also it must be a "majority in value." How is such a majority to be calculated? The doubt arises on the question whether the amount paid-up on each share, or the nominal value of the share, is to be taken as its value. The latter is certainly the most convenient interpretation, and in the absence of any authority on the point (the phrase does not occur in the English "Companies Act"), may, perhaps, be taken to be the correct one.

Majority in number;

and in value.

But, express as this section is in prescribing the method of making and altering the rules of the company, a difficulty seems to be introduced by s. 18, which makes companies under the "No-liability Act" subject to certain sections of the "Companies Act," and amongst them to ss. 82 and 83, of which s. 82 declares that a company formed under the "Companies Act" may alter "its regulations contained in its articles" by special resolution; and s. 83 defines a special resolution, which has to be passed by a majority of three-fourths of the members present at one meeting, and confirmed by a majority at a subsequent meeting. If the "regulations contained in the articles" can by any means be construed to be identical with the "rules" previously referred to in the "No-liability Act," then the requirements of these sections are irreconcilably opposed to those of s. 16. But it must be confessed it appears impossible to hold that "regulations contained in articles" can have any application to a company under the "No-liability Act," which has no regulations and no articles; and it seems preferable to say that, whatever may be the meaning of s. 82, as applied to this Act, it cannot override the clear and express provisions of s. 16. As far as s. 83 is concerned, it may well be that the rules of a no-liability company may provide for certain matters being done only in pursuance of a special resolution, as defined by that section.

Special resolution under s. 83 "Companies Act."

Can a no-liability company, by its rules, give itself power to increase or reduce its capital? It is said in Lindley on Companies, 5th Ed., at p. 397, that "a company has no power to increase its capital, unless such power is expressly conferred upon it, or unless all the shareholders agree to subscribe or raise more than the sum originally determined upon; and if the capital of a company is fixed by its charter, letters patent or special Act, and no power is given to increase it, such capital cannot be increased, even by consent of all the members of the company." And in the case of an ordinary partnership, it is said in Lindley on Partnership, 5th Ed., p. 321, that "the agreed capital of a partnership cannot be added to or withdrawn, except with the consent of all the members of the partnership." These propositions are deduced by the learned author from the cases on the subject, which are few, and not explicit on the point; but if they may (as appears to be the case) be considered a correct statement of

Increase and reduction of capital.

Bouch v. Sprague, 12 App. Cas. at p. 405.

Sect. 17. the law, the power of a no-liability company to increase its capital at all must depend on whether the statement of the capital of the company in the memorandum is to be regarded as fixing the amount of that capital under the Act; whether, in fact, the company is registered and incorporated upon the basis of having its capital as there stated, and not otherwise. If so, there is certainly no power conferred by the Act to increase the capital. And it is submitted that that view of the statement in the memorandum is correct. The Act requires certain statements to be made as the basis of the right of the company to registration and incorporation; of these some, such as the place where the company's mine is situated, and the amount of capital of the company, are in their nature statements of permanent and continuing facts; and thus, by implication, it may be said that the amount of capital is fixed by the statute incorporating the company: it follows that, as the Legislature has given no power to increase that capital, no such power exists, and the capital cannot be increased, even by the express assent of every member of the company.

On this question, see also Brice on *Ultra Vires*; and *Jennings v. Baddeley*, 3 K. & J. 78, a case of partnership.

Reduction of capital.

The same considerations apply, and perhaps more strongly, to the question of the power of a company to reduce its capital. Where a company had powers under its original deed to reduce its capital, and afterwards caused itself to be registered under the "Companies Act, 1862," it was held that it had lost the power of reducing its capital. And the reasoning of the judgment of Kelly, C.B., goes to show that the original power was invalid. The rights and powers of existing companies registering under the "Companies Act" are saved; and the Chief Baron put his decision on the ground that this must be taken to mean lawful powers, and that such a power was not lawful; *Droitwich Salt Co. v. Curzon*, L.R. 3 Ex. 35, at p. 42; and see *Smith v. Goldsworthy*, 4 Q.B. 430.

Company to have a registered office.

17. Every company registered under this Act shall have a registered office situated in this colony, to which all communications and notices may be addressed, and services of any notice or of any writ, declaration, plaint, Judge's order, or other proceeding or process whatsoever in any action, suit, or proceeding at such office shall be deemed to be service upon the company; and if any company shall carry on business without having such an office, the manager thereof shall be liable to a penalty not exceeding five pounds for every day during which business shall be so carried on.

Cf. "Mining Companies Act, 1871," 35 Vict. No. 409 (Victoria), ss. 14-16.

As to the recovery of penalties, see the "Acts Shortening Act," 16 Vict. No. 1, ss. 15, 16, and note to s. 97 of the "Companies Act," *supra*, p. 52.

If the company has no registered office, service at the company's unregistered office would probably be sufficient: *Re British and Foreign Gas Co.*, 11 Jur. (N.S.) 559; or service on the directors and manager at such an office: *Fortune Copper Mining Co.*, 10 Eq. 390.

Cf. "Companies Act," s. 243 (1), as to office of an unregistered company.

18. All companies registered under this Act shall be subject to the following clauses of the "Companies Act" thirty-seventh Victoria number nineteen, so far as they are applicable thereto: numbers eighteen, sixty-nine, seventy, eighty-one to ninety-three, both inclusive (a).

Companies subject to certain provisions of 37 Vict. No. 19.

(a) The following are the sections of the "Companies Act" referred to :—

18. A copy of the memorandum of association, having annexed thereto the articles of association (if any), shall be forwarded to every member at his request on payment of the sum of one shilling, or such less sum as may be prescribed by the company for each copy ; and if any company makes default in forwarding a copy of the memorandum of association and articles of association (if any) to a member in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding one pound

Copies of memorandum and articles to be given to members.

69. Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint stock company, shall specify the names and the dates of the parties to any contract entered into by the company, or the promoters, directors, or trustee thereof before the issue of such prospectus or notice whether subject to adoption by the directors of the company or otherwise, and any prospectus not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same as regards any person taking shares in the company on the faith of such prospectus unless he shall have had notice of such contract.

Prospectus, &c., to specify dates and names of parties to any contract made prior to issue of such prospectus, &c.

70. Every company formed under this Act shall hold a general meeting within four months after its memorandum of association is registered, and if such meeting is not held the company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such four months until the meeting is held, and every director or manager of the company, and every subscriber of the memorandum of association who knowingly authorises or permits such default shall be liable to the same penalty.

Company to hold meeting within four months after registration.

81. A general meeting of every company under this Act shall be held once at the least in every year.

General meeting of company.

Sect 18.

Power to alter regulations by special resolution.

82. Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any company formed under this Act may, in general meeting from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the Table marked A in the First Schedule, where such Table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company ; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Definition of special resolution.

83. A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the regulations of the company to vote as may be present in person or by proxy (in cases where by the regulations of the company proxies are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled according to the regulations of the company to vote as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed. At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the same. Notice of any meeting shall for the purposes of this section be deemed to be duly given, and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the company. In computing the majority under this section when a

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poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company. Sect. 18.

84. In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned, of which seven days' notice in writing has been served on every member, in manner in which notices are required to be served by the Table marked A in the First Schedule hereto, and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same, and in default of any regulation as to who is to be chairman of such meetings, it shall be competent for any such person elected by the members present to preside. Provision where no regulation as to meetings.

85. A copy of any special resolution that is passed by any company under this Act, shall be printed and forwarded to the Registrar of Joint Stock Companies and be recorded by him. If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty. Registry of special resolution.

86. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the company may direct. And if any company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorise, or permit, such default shall incur the like penalty. Copies of special resolutions.

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Sect. 18.

Execution of
deeds on behalf
of companies.

87. Any company under this Act may by instrument in writing under its common seal empower any person, either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in any place wheresoever situate, and every deed signed by such attorney on behalf of the company and under its seal shall be binding on the company and have the same effect as if it were under the common seal of the company.

Examination of
affairs of com-
pany by inspec-
tors.

88. The Governor with the advice of the Executive Council, may appoint one or more competent inspectors, to examine into the affairs of any company under this Act, and to report thereon in such manner as the Governor with such advice may direct upon the applications following, (that is to say)—

- (1) In the case of a banking company that has a capital divided into shares upon the application of members holding not less than one-third part of the whole shares of the company for the time being issued.
- (2) In the case of any other company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company, for the time being issued.
- (3) In the case of any company not having a capital divided into shares upon the application of members, being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

Application for
inspection to be
supported by
evidence.

89. The application shall be supported by such evidence as the Governor with the advice of the Executive Council may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same. The Governor with such advice may also require the applicants to give security for payment of the cost of inquiry, before appointing any inspector or inspectors.

Inspection of
books.

90. It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power, and any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such

oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence. Sect. 18.

91. Upon the conclusion of the examination the inspectors shall report their opinion to the Governor and Executive Council, and such report shall be written or printed as the Governor with the advice of such Council directs. A copy shall be forwarded by the Colonial Secretary to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed; unless the Governor with the advice of the Executive Council shall direct the same to be paid out of the assets of the company, which he with such advice is hereby authorised to do. Result of examination how dealt with

92. Any company under this Act may, by special resolution, appoint inspectors for the purpose of examining into the affairs of the company; and the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Governor, with the advice of the Executive Council, with this exception, that instead of making their report to the Governor and Executive Council, they shall make the same in such manner and to such persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties; in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspector had been appointed by the Governor with the advice aforesaid. Power of company to appoint inspectors.

93. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report. Report of inspectors to be evidence.

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Sch. 1.

SCHEDULES.

FIRST SCHEDULE.

THIS is to certify that a Mining Company called "The _____ Company No-liability" has been duly registered by virtue of the "No-liability Mining Companies Act" incorporated a memorandum pursuant to the said Act having been duly lodged in the office of the Registrar-General, and published in the Government Gazette of the _____ day of _____, and in the

newspaper of the _____ day of _____
[if any other newspaper mention it], and copies of the said Government Gazette and newspaper [if a copy of rules has been forwarded add also a copy of proposed rules of the company] have been duly forwarded to the said office.

Given under my hand this _____ day of _____

A.B.,
Registrar-General.

SECOND SCHEDULE.

I THE undersigned hereby make application to register [here insert the name of the company] as a No-liability Mining Company under the provisions of the "No-liability Mining Companies Act" of 1881—

- (1) The name of the company is to be _____
- (2) The place of operations [or, intended operations] is at _____
- (3) The registered office of the company will be situated at _____
- (4) The value of the company's plant and machinery is (a). _____
- (5) The company's mine consists of _____ acres held under [here insert nature of company's title.] _____
- (6) The amount of money at the company's credit is _____ and the total liability of the company is _____
- (7) The nominal capital of the company is £ _____ in _____ shares of each of which _____ are paid up to _____ each and _____ are contributing shares to the extent of _____ each (b).
- (8) The number of contributing shares subscribed for is _____
- (9) The name of the manager is _____
- (10) The names and addresses and occupations of the shareholders and the number of shares distinguishing the contributing from the non-contributing shares held by each at this date are as below.

[Here insert names, &c., of shareholders.]

- (11) Ten per cent. of the subscribed capital has been duly paid up (b).
- (12) The only contracts entered into on behalf of this company are those of which the particulars are stated hereunder.

A.B.,
Manager.

Dated this _____ day of _____ 18 _____

Witness to signature, C.D.

I A.B. do solemnly and sincerely declare that—

- (1) I am the manager of the said intended company.
- (2) The above statement is to the best of my belief and knowledge true in every particular.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act made and passed in the ninth year of the reign of Her present Majesty intituled "An Act for the more effectual abolition of oaths and affirmations taken and made in various Departments of the Government of New South Wales and to substitute declarations in lieu thereof and for the suppression of voluntary and extra-judicial oaths and affidavits."

Taken before me—

J.P.

(a) See introduction to the Act, (b) See notes to s. 2, *supra*, p. 284. *supra*, p. 279.

MODEL RULES OF A NO-LIABILITY COMPANY.

[NOTE.—These Rules have been chiefly compiled from the Articles in Palmer's Company Precedents, the Articles given in Table A, Schedule 1 to the "Companies Act," and from the Rules appended to the Victorian "Mining Companies Act, 1871." Certain rules, such as those providing for increase and reduction of capital, have been omitted, in pursuance of the opinion expressed in the notes to the sections of the "No-liability Act" that no-liability companies cannot by rules acquire such powers.]

PRELIMINARY.

1. The marginal notes hereto shall not affect the construction Interpretation. hereof, and in these presents, unless there be something in the subject or context inconsistent therewith,

"The Act" means the "Act to incorporate No-liability "The Act." Mining Companies," 44 Vict. No. 23.

"Special resolution" has the meaning assigned to it by s. "Special resolution." 83 of the "Companies Act."

"The office" means the registered office for the time being "The office." of the company.

"In writing" means written or printed, or partly written "In writing." and partly printed.

Words importing the singular number only include the plural, and *vice versa*.

Words importing the masculine gender only include the feminine.

Words importing persons include corporations.

2. The company shall forthwith enter into an agreement with Agreement adopted. A.B. in terms of the agreement bearing date the day of A.D. , made between A.B. and C.D. as a trustee for the company, and the directors are empowered forthwith to affix the seal of the company to such an agreement, with full power, nevertheless, to agree to any modification of the said agreement, either before or after the execution thereof.

Rule 3.

Commence-
ment of
business.

Issue of
unallotted
shares.

3. The business of the company may be commenced as soon after registration as the directors shall see fit, and notwithstanding that the whole of the shares shall not have been subscribed.

4. The unissued shares of the company shall be under the control of the directors, who may allot or otherwise dispose of the same to such persons and on such terms and conditions and at such times as they may think fit.

SHAREHOLDERS.

Definition of a
shareholder.

5. The persons named as shareholders in the memorandum filed in the office of the Registrar-General in pursuance of section 2 of the Act shall be shareholders in the company, and they shall be entered as shareholders in the register of shareholders hereinafter mentioned; and every other person who has agreed to become a shareholder in the company, and whose name has been entered on the register of shareholders, shall be deemed to be a shareholder.

Joint holders.

6. When two or more persons are registered as the joint holders of any share or shares, any notice required by these rules to be served on a shareholder shall be served on the holder whose name stands first in the register of shareholders; and such notice shall be deemed to be served on the holders of the share or shares. Any one of such joint holders may give effectual receipts for any dividends payable in respect of such shares.

Trusts not
recognised.

7. The company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not be bound to recognise any equitable or other claim to, or interest in, such share on the part of any other person, save as herein provided.

REGISTER OF SHAREHOLDERS.

Register of
shareholders to
be kept.

8. The directors shall cause to be kept a register of the shareholders of the company; in it shall be entered the name and address of every shareholder, with the numbers of the shares held by him, the date when he became and ceased to be a shareholder, the particulars of all transfers of shares, and of calls paid or due on each share, and also particulars of the forfeiture of any share or shares.

SHARES.

Rule 13.

9. The shares of the company shall be numbered progressively, and shall be distinguished by such number. Shares to be numbered.

10. A scrip certificate, under the seal of the company and signed by the manager and two of the directors, shall be issued to each shareholder, and shall be in the form following, that is to say :— Certificate to be issued.

No. of issue,	Folio,	Form of certificate.
Company, No-liability.		
Capital, £	, in	shares of £ each.
This is to certify that , of , is a shareholder in the above-named company, and the proprietor of shares numbered therein, upon which the sum of £ per share has been paid-up, subject to the rules of the company.		
Dated this day of , 18 .		
(Seal)	} Directors.	

Manager.

N.B.—This certificate must be given up to the manager on transfer of the above shares.

There shall also be printed on the face of the certificate the notice required by section 14 of the Act.

11. If any shareholder shall hold more than one share, such certificate may include all the shares held by such shareholder. Certificate may include all shares held by one owner.

12. If any shareholder at any time be desirous of having separate certificates for either or any of the shares held by him, or of having any particular number of shares held by him inserted on one or more than one certificate, he shall be entitled to have such certificate or certificates issued to him on delivering up to the manager any certificate or certificates which may have been issued for, or in respect of, the shares for which he shall desire such new certificate or certificates, and on payment of one shilling for every certificate after the first. Shareholder may obtain more than one certificate.

13. If any such certificate be lost or defaced, the directors may permit a duplicate thereof to be issued ; but in case of its loss, upon a statutory declaration being made by its owner as to the loss, who shall give such security as the directors may require Duplicate certificate may issue on loss of original.

Rule 14. before any such duplicate is issued, and any person losing any certificate shall take such steps for the recovery of the same as the directors may direct.

TRANSFER OF SHARES.

Transfer of
shares.

14. The instrument of transfer of any share in the company shall be signed both by the transferor and by the transferee; and the transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the register of shareholders as the holder of such share.

15. The instrument of transfer of shares in the company shall be in the following form :—

Form of
transfer.

I, A.B., of , in consideration of the sum of £ paid to me by C.D., of , do hereby transfer to the said C.D. the share (or shares) numbered standing in my name in the books of the Company (No-liability) to hold unto the said C.D., his executors, administrators, and assigns, subject to the conditions on which I hold the same, and to the rules of the said company, and I, the said C.D., do hereby agree to take the said share (or shares) subject to the said conditions and rules. As witness our hands this day of .

Stamp on
transfer.

As to stamp duty, see note to Art. 8, Table A, "Companies Act."

Transfer of
shares on which
call unpaid.

16. The directors may decline to register any transfer of shares on which a call is due and unpaid; and, in the case of shares not fully paid up, may refuse to register a transfer to a transferee of whom they do not approve.

Books closed
for transfers.

17. No transfer shall be registered in the books of the company during the seven days preceding the ordinary general meetings in each year.

Certificate and
transfer to be
left at the office.

18. Every instrument of transfer shall be left at the office for registration accompanied by the certificate of the shares to be transferred, and such other evidence as the directors may require to prove the title of the transferor or his right to transfer the shares.

Transferee to
become a share-
holder on regis-
tration.

19. Upon the name of any person being entered on the register of shareholders as the transferee of a share, such person shall become a shareholder in the company, in respect of the

share so transferred to him, in the same manner as if he had Rule 26.
been an original shareholder.

REPRESENTATIVES OF SHAREHOLDERS.

20. The executors or administrators of a deceased shareholder shall be the only persons recognised by the company as having any title to his or her share or shares. Executors, &c., entitled on death of shareholder.

21. The guardian of any infant shareholder, and the committee of any lunatic shareholder, and any person becoming entitled to a share or shares, in consequence of the death, insolvency, or bankruptcy of any shareholder, or in consequence of the marriage of any female shareholder, may be registered as a shareholder upon such evidence being produced as may from time to time be required by the directors. Shareholders in case of death, bankruptcy, &c., of shareholder.

22. Any person becoming entitled to a share or shares, in consequence of the death, insolvency, or bankruptcy of any shareholder, or in consequence of the marriage of a female shareholder, may, instead of being himself registered, elect to have some person named by him registered as a transferee of such share. Executor, &c., may elect transferee.

CALLS.

23. The directors may, from time to time, subject to the provisions of the Act, make such call or calls upon the shareholders, in respect of all moneys unpaid upon their shares as they shall think proper: Provided always that no such call shall exceed the sum of _____ per share, and no call shall be payable at any time less than fourteen days from the day on which it was made. Calls may be made.

24. A resolution authorising a call shall fix the amount of the call and the date of its payment. Amount and date of payment to be fixed.

See In re Cawley & Co., 42 Ch. Div. 209.

25. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed. Call when deemed made.

26. No call shall be made until after the expiration of one month from the day when the last preceding call was payable. Successive calls at intervals of one month.

See s. 15.

Rule 27.

Advertisement
and notice of
calls.

27. In pursuance of the requirements of s. 14 of the Act, when a call shall have been made, notice of the day when it will be payable, and of the place for payment thereof, shall be published in the Government Gazette, and in the newspaper published in Sydney, and in the newspaper published *[here insert the name of one or more newspapers circulating in the locality where the company's mine is situated]*.

Notice by post.

28. Fourteen days' notice by post of any call shall also be given to each shareholder, in manner hereinafter provided for giving notices; such notice shall specify the amount of the call, the time and place of payment, and the person to whom the call is payable, and shall also state that unless the call be paid within twenty-eight days of the day when it is payable, the shares on which the call remains unpaid will be absolutely forfeited.

But see note to s. 8.

Second notice.

29. If a call remain unpaid on any shares for fourteen days after the day fixed for the payment thereof, a further notice shall be sent to the holder of such shares, repeating the notice mentioned in the last preceding rule.

But see note to s. 8.

Payment in
advance.

30. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys unpaid upon the shares held by him, beyond the sums actually called for; and upon the sums so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares, in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors may agree upon.

GENERAL MEETINGS.

General
meetings.

31. There shall be two general meetings in each year, of which the general meeting at which these rules are adopted shall be considered the first; subsequent meetings shall be held at such time and place as may be prescribed by the company in general meeting, and if no other time or place is prescribed, in the months of _____ in every year at such time and place as may be determined by the directors.

A difficulty in regard to the first meeting is caused by the want of any provision in the Act making the rules effective on registration. As the Act stands, they are not so effective; although by s. 2 a copy of the proposed rules of the company is to be sent to the Registrar before registration, yet they do not apparently become rules of the company until made so by a majority in number and value of the shareholders under s. 16. If this be the case, a first meeting cannot be called under the provisions of rules which have no existence; and the first meeting must accordingly be called in accordance with s. 84 of the "Companies Act" (adopted by s. 18 of the "No-liability Act," see R. 36, *infra*); that is to say, it should be summoned by five members, seven days' notice in writing being given of the meeting, such notice having been either personally served on all the shareholders (whose names and addresses must be given in the memorandum filed in accordance with s. 2), or else sent to them through the post in a prepaid letter, addressed to each of them at his address given as above. It must, however, be confessed that there is the greatest difficulty in applying the requirements of the adopted sections of the "Companies Act" to companies under the "No-liability Act," referring, as they do, to memoranda and articles of association, registers, and other matters that have no place in the "No-liability Act." There is the further difficulty before referred to, that the "No-liability Act" seems to contemplate the existence of shares and shareholders in the company before it comes into existence. It may possibly be considered that the shareholders whose names appear in the memorandum, may, by that very fact, be taken to have assented to the proposed rules which are filed with the memorandum, and that these rules may, therefore, have force directly the company is incorporated, and the company may accordingly proceed to work under them. But it is submitted that the least unsatisfactory course to adopt is that above suggested of calling a meeting under the provisions of s. 84, and immediately adopting the rules; though it must not be forgotten that such rules can only be made by a majority in number and value of the shareholders (see note to s. 16); and as suggested in that note, that proxies cannot be used at this meeting.

Rule 34.

First general meeting.

A general meeting must, in any case, be held under s. 70 of the "Companies Act" within four months after the "memorandum of association" is registered; which presumably, in the case of a no-liability company, must be taken to mean, after the memorandum referred to in s. 2 is registered; and by s. 81, a general meeting must be held once in every year.

32. The above mentioned general meetings shall be called ordinary meetings; all other meetings of the company shall be called extraordinary general meetings.

Ordinary and extraordinary meetings.

33. The directors may, whenever they shall think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the shareholders of the company, convene an extraordinary general meeting.

When extraordinary meeting to be called.

34. Any such requisition shall specify the object of the meeting required, and shall be signed by the shareholders making the same, and shall be left at the office of the company. The meeting must be convened for the purposes specified in the requisitions,

Requisition by members.

Rule 35. and if convened otherwise than by the directors, for those purposes only.

When requisitionists may call meeting.

35. In case the directors shall for fourteen days after such requisition has been so left at the office as aforesaid, fail to convene an extraordinary meeting to be held within 21 days of such leaving, the shareholders making the requisition, or any other shareholders being not less than one-fifth in number of the shareholders, may themselves convene a meeting to be held within six weeks of the date of leaving the requisition at the registered office.

Notice of meeting.

36. Except in the case of the first general meeting, seven clear days' notice, at the least, of every general meeting, specifying the place, day, and hour of meeting, and, in case of special business, the general nature of such business, shall be given, by notice sent by post, or otherwise served as hereinafter provided; but the accidental omission to give such notice to any of the shareholders shall not invalidate any resolution passed at any such meeting.

PROCEEDINGS AT GENERAL MEETINGS.

Business of ordinary meeting.

37. The business of an ordinary meeting shall be to receive and consider the profit and loss account, and the balance-sheet, the reports of the directors and auditors, to elect directors and other officers in the place of those retiring by rotation, to declare dividends, and to transact any other business which, under these presents, ought to be transacted at an ordinary meeting; and any business which is brought under consideration by the report of the directors issued with the notice convening such meeting. All other business transacted at an ordinary meeting, and all business transacted at an extraordinary meeting, shall be deemed special.

Quorum.

38. No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of shareholders is present at the time the meeting proceeds to business, save as provided by the next succeeding rule. Such quorum shall consist of five shareholders personally present, holding, or representing by proxy, not less than one-tenth part of the issued capital of the company.

39. If within one hour from the time appointed for the meeting **Rule 44.**
 a quorum is not present, the meeting, if convened upon the Provision if no quorum.
 requisition of the shareholders, shall be dissolved ; but in any
 other case it shall stand adjourned till the same day in the next
 week at the same time and place, and if at such adjourned meeting
 a quorum is not present, those shareholders who are present shall
 be a quorum, and may transact the business for which the meeting
 was called.

40. The chairman of the directors shall be entitled to take the Chairman.
 chair at every general meeting, or if there be no such chairman,
 or if at any meeting he shall not be present within fifteen minutes
 after the time appointed for holding such meeting, the share-
 holders present shall choose one of their number to be chairman.

41. Every question submitted to a meeting shall be decided, Voting by show of hands.
 in the first instance by a show of hands, and in the case of an
 equality of votes, the chairman shall, both on the show of hands,
 and at the poll, have a casting vote in addition to the vote or Casting vote.
 votes to which he may be entitled as a shareholder.

42. At any general meeting, unless a poll is demanded by Poll.
 least five shareholders, a declaration by the chairman that a Declaration by chairman conclusive.
 resolution has been carried, or carried by a particular majority,
 or lost, or not carried by a particular majority, and an entry
 to that effect in the books of the company, shall be conclusive
 evidence of the fact, without proof of the number or proportion
 of the votes recorded in favour of or against such resolution.

But no such rule as this could override the express provision of the Act, that
 rules can only be made or altered by a majority in number and value of the
 shareholders, and in the case of the making or altering of a rule it is conceived
 that the existence of a "majority in number and value," in favour of the rule or
 the alteration, must be in some way ascertained, either by a poll or otherwise ;
 or at any rate that the declaration by the chairman can only be *prima facie*
 evidence liable to be rebutted.

43. If a poll is demanded as aforesaid, it shall be taken in such Poll, when taken.
 manner, and at such time and place as the chairman of the
 meeting directs, and either at once, or after an adjournment ;
 and the result of the poll shall be deemed to be the resolution of
 the meeting at which the poll was demanded.

44. The chairman of a general meeting may, with the consent Adjournment.
 of the meeting, adjourn the same from time to time and from

**Poll on election
of chairman or
adjournment.**

One vote for every share.

Vote of lunatic shareholder.

Joint holders.

**No one to vote,
calls on whose
shares are not
paid.**

**Proxies may be used.
Instrument appointing proxy to be in writing.**

**To be left at
registered office
twenty-four
hours before
meeting.**

**Form of instru-
ment appoint-
ing proxy.**

Company [No-liability].

I, _____ of _____, in the colony of _____, being a
shareholder in the _____ company [No-liability], and entitled

to votes, hereby appoint of as my proxy **Rule 58.**
to vote for me and on my behalf at the [ordinary or extra-
ordinary] general meeting of the company, to be held on the
day of and at any adjournment thereof [or,
at any meeting of the company that may be held in the year
, or, during my absence from the colony of New South
Wales].

As witness my hand this day of .
Signed by the said in the presence of .

An instrument appointing a proxy does not require to be stamped; unless it
be in the form of a deed, in which case it requires a £1 stamp.

DIRECTORS.

54. No person shall be qualified to be a director who is not **Director's qualification.**
the holder of shares or more.

Under this rule the holding of shares is a condition precedent to the right to **Condition precedent.**
be appointed a director, and the appointment of anyone not possessing the
qualification is void: *Jenner's Case*, 7 Ch. Div. 182. If it be desired to have the
power to appoint a director who is not qualified at the time, the rule may read **Alternative rule.**
"The qualification of every director shall be the holding of shares";
and a further rule may then provide for his office being vacated if the director
does not, within a certain time, procure shares.

55. The number of the directors shall be [seven]. **Number.**

56. The first directors shall be elected at the first general **First directors.**
meeting of the company, held in the month of , 18 ;
and at the general meeting to be held in the said month in **Retirement,**
every subsequent year one-third of the directors for the time
being, or, if their number is not a multiple of three, then the
number nearest to one-third (but not exceeding one-third), shall
retire from office.

57. The one-third or other number, as aforesaid, to retire at **in first and subsequent years.**
the general meeting in the month of , A.D. , shall be
determined by lot; in every subsequent year the one-third, or
other nearest number, who have been longest in office, shall
retire. As between two or more who have been in office an
equal length of time, the director to retire shall, in default of
agreement between them, be determined by lot. The length of
time a director has been in office shall be computed from his last
election or appointment, where he has previously vacated office.

58. A retiring director shall be eligible for re-election. **Re-eligible.**

Rule 59.

Election to fill
vacancies.

59. The company at the general meeting at which any directors retire in manner aforesaid, shall fill up the vacated offices by electing a like number of shareholders [qualified as aforesaid] to be directors, and may fill up other vacancies.

The words in brackets will be used, if the qualification be a condition precedent: see R. 54.

Provision in
case of no
election.

60. If at any meeting at which an election of directors ought to take place the places of the retiring directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at such hour and place as the majority of shareholders present at the meeting shall decide; and if at such adjourned meeting the places of the retiring directors are not filled up, the retiring directors, or such of them that had not their places filled up, shall continue their office until the general meeting to be held in the said month in the next year, and so on, from time to time, until their places are filled up.

Alteration in
number.

61. The company may, from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

But an alteration in the number of directors, though in pursuance of this rule, involves an alteration of Rule 55, and so ought only to be made by a majority in number and value of the shareholders.

Removal of a
director.

62. The company may, by special resolution, remove any director before the expiration of his period of office, and appoint another [qualified] person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

When office of
director to be
vacated.

63. The office of a director shall be vacated:—

- (a) If he accept or hold any other office under the company.
- (b) If he become bankrupt, or suspend payment, or assign his estate for the benefit of his creditors.
- (c) If he be found lunatic, or become of unsound mind.
- (d) If he cease to hold the required number of shares to qualify him for the office.
- (e) If he is concerned in, or participates in, the profits of any contract with, or work done for, the company; but no

director shall vacate his office by reason of his being a member of any company which has entered into a contract with or done any work for this company, or which is concerned in or participates in the profits of any contract with the company. **Rule 68.**

- (f) If he absent himself from the meetings of the directors during a period of three calendar months without special leave of absence from the directors.

64. A director may resign his office by sending in his resignation in writing to the manager. Resignation

65. The continuing directors may act, notwithstanding any vacancy in their body, until their number falls below the number fixed in accordance with these rules as a quorum, but if their number falls below such quorum, then they shall act for the purpose only of filling up vacancies in their number as herein-after provided. Directors may act notwithstanding vacancy.

REMOVAL OF DIRECTORS.

66. If any director shall refuse or neglect, or become unfit or incapable by reason of his absence from the colony or otherwise, to act in his office, he may be removed therefrom by the other directors at a meeting of directors at which a quorum shall be present. Removal of directors.

OCCASIONAL DIRECTORS.

67. When a director shall cease to be such by reason of his office being vacated as above-mentioned, or of his resigning, or being removed, or of his dying, the other directors shall elect any shareholder not then a director of the company [qualified as aforesaid] to be a director in the place of the director ceasing to be such: Provided always that the general meeting held subsequently to any such appointment shall confirm such appointment, or elect some other qualified shareholder to the vacant office, and in either case the shareholder shall continue in office for so long only as the person in whose place he shall have been elected would have been entitled to continue if he had remained in office. Power to fill occasional vacancies.

MEETINGS OF DIRECTORS.

68. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they Meetings of directors, quorum, &c.

- Rule 69.** think fit, and may determine the quorum necessary for the transaction of business. Until otherwise determined, three directors shall form a quorum. Questions arising at any of the meetings shall be decided by a majority of votes. In case of equality of votes, the chairman shall give a second or casting vote.
- Voting.**
- Power to summon meetings.** 69. A director may at any time, and the manager shall at the request of any two directors, summon a special meeting of directors.
- Chairman.** 70. The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present at the appointed time for holding the same, the directors present shall choose some one of their number to become chairman of such meeting.
- Power to appoint committees and to delegate.** 71. The directors may delegate their powers to committees of such member or members of their body as they think fit; any committee so formed shall, in the exercise of their powers so delegated, conform to any regulations that may be imposed upon them by the directors.
- Proceedings of committee.** 72. A committee may elect a chairman for their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman for such meeting.
- Chairman.**
- Meetings.** 73. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of equality of votes the chairman shall have a second or casting vote.
- Acts of directors or committee valid notwithstanding defect.** [All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of such directors or person acting as aforesaid, or that they, or any of them, be disqualified, be as valid as if every such person had been duly appointed, and was qualified to be a director.]

This is a usual clause in the articles of a company under the "Companies Act." But in the case of such a company it is based on and supported by s. 98 of that Act; and there is no section in the "No-liability Act" corresponding

with s. 98. It is submitted that without the authority of a statute the rule is *ultra vires* if taken to be aimed at any questions that might arise between the company and its shareholders, as, *e.g.*, a question of the validity of a call. As between the company and other persons not shareholders, it may well be that directors *de facto* may have authority to bind the company as largely as directors *de jure*: *Mahony v. East Holyford Mining Co.*, 1 L.R. 7 H.L. 869. Whether that be so will depend in each case on its own circumstances; and it would seem as well to leave each case to be so decided on its facts and the ordinary principles of agency, so far as they apply.

Rule 76.

74. The directors shall cause minutes to be duly entered in books Minutes to be kept. provided for that purpose (a) of all appointments of officers; (b) of the names of the directors present at each meeting of the directors, and of any committee of directors; (c) of all resolutions and proceedings of general meetings and of meetings of the directors and committees. And any such minutes of any meeting of the directors, or of any committee or of the company if purporting to be signed by the chairman of such meeting, or by the chairman of the next succeeding meeting, shall be receivable as *prima facie* evidence of the matters stated in such minutes.

But this clause as to evidence can hardly (in the absence of statutory provisions) make the minutes evidence against strangers, though it may be effectual against a member of the company: *Roney's Case*, 4 D.J. & S. 426.

POWERS OF DIRECTORS.

75. The management of the business of the company shall be vested in the directors, who, in addition to the powers and authorities by these rules expressly conferred on them, may exercise all such powers and do all such acts and things as may be exercised or done by the company, and are not hereby or by the Act expressly directed or required to be exercised or done by the company in general meeting, but subject to the provisions of the Act and to the rules of the company. General powers of the company vested in directors.

76. Without prejudice to the general powers conferred by the last preceding rule, and other powers conferred by these rules, it is hereby expressly declared that the directors shall have the following powers:— Specific powers of directors.

- (1) To pay the costs, charges and expenses, preliminary and incidental to the promotion, formation, establishment and registration of the company. To pay preliminary expenses.

Rule 76.

To acquire
property, &c.

- (2) To purchase and otherwise acquire for the company any property, rights, or privileges which the company is authorised to acquire at such price and generally on such terms and conditions as they may see fit.

To secure
contracts by
mortgage.

- (3) To secure the fulfilment of any contracts or engagements entered into by the company by mortgage or charge of all or any property of the company as they may see fit.

To borrow and
mortgage.

- (4) To raise or borrow any sums or sum of money for the purposes of the company, upon such terms and conditions as they may think fit, securing the repayment thereof by mortgage of any part of the property of the company.

To appoint
officers.

- (5) To appoint, and at their discretion to remove or suspend, any managers, mining managers, officers, clerks, and servants of the company as they may from time to time see fit, and to determine their duties and emoluments, and to require security in such cases and in such amounts as they may see fit.

To appoint
trustees.

- (6) To appoint any persons to accept and hold in trust for the company any property belonging to the company, or in which it is interested, or for any other purposes, and to execute and do all such deeds and things as may be requisite in relation to any such trust.

To bring
actions, &c.

- (7) To institute, conduct, defend, compound, or abandon any legal proceedings by or against the company or its officers or otherwise concerning the affairs of the company, and also to compound and allow time for payment, or satisfaction of any debts due, and of any claims or demands by or against the company.

To refer to
arbitration.

- (8) To refer any claims or demands by or against the company to arbitration, and observe and perform the awards.

To give receipts

- (9) To make and give receipts, releases, and other discharges for money payable to the company, and for the claims and demands of the company.

To give security
by way of
indemnity.

- (10) To execute in the name and on behalf of the company in favour of any director or other person who may incur, or be about to incur, any personal liability for the benefit of the company such mortgages of the company's property, present or future, as they think fit, and any such mortgage

may contain a power of sale and such other powers, Rule 8 2.
covenants, and provisions as shall be agreed on.

- (11) To enter into all such negotiations and contracts, and To make and vary contracts.
rescind and vary all such contracts, and do and execute
all such acts, deeds, and things in the name and on behalf
of the company as they may consider expedient for and in
relation to the matters aforesaid or otherwise.

REMUNERATION OF DIRECTORS.

76. The board of directors shall receive as remuneration for Remuneration of directors.
their services, such sum as may from time to time be fixed at any
general or special meeting, to be paid out of the funds of the
company, and to be divided among the directors as they may
fix amongst themselves.

MANAGER.

77. Mr. shall be the first manager of the company. First manager.

78. During any vacancy in the office of manager, the directors Temporary manager.
shall have power to appoint a temporary manager, who shall be
considered the manager for all purposes.

THE SEAL.

79. The directors shall provide for the safe custody of the seal, Use of seal.
and the seal shall never be used except by the authority of the
directors previously given, and in the presence of two directors
at the least, who shall sign every instrument to which the seal
is affixed, and every such instrument shall be countersigned by
the manager.

DIVIDEND.

80. The directors may, with the sanction of the company in Dividend in proportion to shares.
general meeting, declare a dividend to be paid to the members
in proportion to their shares.

This means in proportion to the nominal value of the shares, not to the
amount paid up: *Oakbank Oil Co. v. Crum*, 8 App. Cas. 65.

81. No dividend shall be payable except out of the profits To be out of profits.
arising from the operations of the company.

82. The directors may, from time to time, pay to the members Interim dividends.
such interim dividends as in their opinion the position of the
company justifies.

Rule 83.

Directors may set aside profits to form reserve fund.

83. The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they may think proper as a reserve fund to meet contingencies, or for equalising dividends for repairing or maintaining the works and machinery connected with the business of the company, or any part thereof, and the directors may invest the sums so set apart upon such securities as they may select.

Notice to be given.

84. Notice of any dividend that may have been declared shall be given to each shareholder, in manner hereinafter mentioned, for giving notices.

No dividend on share on which call unpaid.

85. No shareholder shall be entitled to a dividend upon any share upon which a call is due and unpaid: see s. 7.

86. No dividend shall bear interest as against the company.

ACCOUNTS.

Accounts to be kept.

87. The directors shall cause true accounts to be kept of the sums of money received and expended by the company, and of the matter in respect of which such receipt and expenditure takes place, and of the assets, credits, and liabilities of the company.

At registered office.

88. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors may think fit.

Right to inspect books.

89. The directors shall, from time to time, determine whether, and to what extent, and at what times and places, and under what conditions, the accounts and books of the company, or any of them, shall be open to inspection by the shareholders; but no shareholder shall have any right of inspecting any account, or book, or document of the company, except as authorised by the directors, or by a resolution of the company in general meeting.

Semi-annual statement and balance sheet.

90. At each of the two ordinary general meetings in each year the directors shall lay before the company a profit and loss account, and a balance-sheet, containing a summary of the property and liabilities of the company, made up to a date not more than one month before the meeting, from the time when the last preceding account and balance-sheet were made, or in the case of the first account and balance-sheet, from the incorporation of the company.

91. Every such balance-sheet shall be accompanied by a report **Rule 99.**
of the directors, as to the state and condition of the company, **Report.**
and its mine and other property, and as to the amount which
they recommend to be paid out of profits by way of dividend to
the shareholders, and the amount (if any) which they propose to
carry to the reserve fund ; and the account, report, and balance-
sheet shall be signed by two of the directors and by the manager.

92. A printed copy of such account, report, and balance-sheet **Copies of
balance-sheet
and report to
be served on
shareholders.**
shall, seven days previously to the meeting at which they are to
be presented, be served on each shareholder in the manner in
which notices are hereinafter directed to be served.

AUDIT.

93. Twice at least in every year, immediately before the **Accounts to be
audited twice
a year.**
ordinary general meetings, the accounts of the company shall be
examined and the correctness of the balance-sheet ascertained
by one or more auditor or auditors.

94. The auditor or auditors shall be appointed by the company **Appointment
and remunera-
tion of auditors.**
at the first ordinary general meeting in each year. The
remuneration of the auditors shall be fixed by the company in
general meeting.

95. Any auditor quitting office shall be eligible for re-election. **Re-eligible.**

96. The auditors may be shareholders ; but no person shall be **Shareholders
may be auditors**
eligible as an auditor who is interested other than as a share-
holder in any transaction of the company, and no director or
other officer of the company shall be eligible during his
continuance in office.

97. If any casual vacancy occurs in the office of auditor the **Casual vacancy.**
directors shall forthwith fill up the same.

98. The auditors shall be supplied with copies of the statement **Auditors to
report on
annual state-
ment and
balance-sheet.**
of accounts and balance-sheet intended to be laid before the
company in general meeting seven days at least before the
meeting to which the same are to be submitted, and it shall be
their duty to examine the same with the accounts and vouchers
relating thereto, and to report to the company in general meeting
thereon.

99. The auditors shall at all reasonable times have access to **Inspection of
books, &c., by
auditors.**
the books and accounts of the company, and they may at the

Rule 100. expense of the company employ accountants or other persons to assist him in investigating such accounts ; they may also examine the directors, manager, and officers of the company in relation to such accounts.

NOTICES.

Notices may be served personally or by post.

100. Any notice hereinbefore directed to be given to shareholders may be served by the company upon any shareholder personally, or by sending it through the post in a prepaid letter addressed to such shareholder at his address as entered into the register of shareholders.

Notice to joint shareholders.

101. All notices directed to be given to the shareholders shall with respect to any share or shares to which persons are jointly entitled be given to whichever of such persons is named first on the register of shareholders, and notice so given shall be sufficient notice to all the holders of such share or shares.

Notice by post, when deemed to be served.

102. Any notice if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post-office.

Shareholder out of Australia.

103. Any shareholder residing out of the Australian colonies shall give some address in New South Wales to which notices may be sent; and when so sent as hereinbefore provided they shall be considered as served upon the shareholder in due course of post.

WINDING-UP.

Winding-up; assets.

104. If the company be wound-up in accordance with the provisions of s. 9 of the Act, the surplus assets shall be distributed among the shareholders in proportion to the amount paid-up on their shares.

Notice of special meeting.

105. The special meeting required to be held under s. 9 of the Act shall be called in the same manner as any general meeting of the company, save that in addition to the notices required by R. 36 to be given, the advertisements required by s. 9 shall be published as therein directed.

THE MINING PARTNERSHIPS ACT, 1861.

An Act to limit the Liability of Mining Partnerships.

34 Vict., No. 21.

[9 May, 1861.] (a.)

WHEREAS it is expedient that encouragement should be Preamble.
given for the investment of capital in mining adventures, and
that provision should be made for the limitation of the personal
liability of shareholders in mining companies. Be it therefore
enacted by the Queen's Most Excellent Majesty, by and with the
advice and consent of the Legislative Council and Legislative
Assembly of New South Wales, in Parliament assembled, and
by the authority of the same, as follows :—

1. This Act shall extend and apply only to companies formed Application and interpretation of this Act.
or to be formed for mining purposes, and in the construction and
interpretation of this Act the words "mining purposes" shall
mean the purpose of obtaining any precious or other metal by
any mode or method whatsoever, whereby the soil or earth, or
any rock or stone, may be disturbed, removed, carted, carried,
washed, sifted, smelted, refined, crushed, or otherwise dealt with
for the purpose of obtaining such metal whether such metal shall
be the property of such company or of any other person whatso-
ever, and the word "company" shall include any partnership or
co-adventure (b).

(a) Amended by 34 Vict. No. 16, (b) Extended by s. 1, 34 Vict. No.
infra. 16, *infra.*

2. (Limitation of liability.) [*Repealed by 34 Vict. No. 16, infra.*]

3. Every such company shall appoint a manager by and in
whose name the company may sue or be sued, plead or be
impleaded, in all Courts and places whatever, and no action or
suit at law or in equity shall be brought against any member of
such company for the recovery of any debts contracted for or by
the company unless such member shall be the manager thereof.
Provided that nothing herein contained shall be deemed to apply
to any particular contract which shall have been authorised by
the person to be charged therewith. Company to sue and be sued by and in name of manager.

Sect. 4.

Contracts made
by the manager
to be binding on
the company.

4. All contracts made by the manager for the time being or by his authority for the purposes of the said company shall be binding upon the company and upon the assets thereof as herein provided, and such assets may be seized and sold in execution in any action against such manager for any debt incurred by him on behalf of the said company.

See on these sections *Hoskins v. Davis*, 11 S.C.R. 305, where it was held that s. 3 "is not controlled or restricted by the provision in s. 4; the object and effect of the latter section being only to make contracts with the manager equivalent to contracts with the company": *per* Stephen, C.J., at p. 309.

Proceedings not
to abate by
death of
manager.

5. The death, removal, or resignation of such manager shall not abate any such action or proceeding, but the same may be continued and prosecuted in the name of the next succeeding manager for the time being of the company. And if such company shall neglect or fail to appoint such succeeding manager, then such action or proceeding may be continued and prosecuted in the name of the company. Provided that no second suit, action, or proceeding shall be at any time commenced by or against such company or such succeeding manager where the merits shall have been tried and decided in the first suit or action.

Companies to
be registered.

6. Any company which may hereafter be formed under the provisions of this Act shall lodge with the Registrar of the District Court nearest to the place of operations or proposed operations a memorial in the form of the Schedule to this Act, signed by the manager of such company, and the said memorial shall be published in the Government Gazette and at least twice in one or more of the newspapers published and circulating in the district, and copies of such Gazette and newspapers shall be forwarded to the said Registrar, who shall thereupon proceed to register such company. And a copy of the said memorial shall within thirty days after such advertisement be filed in the Supreme Court, Sydney.

Companies in
existence may
be registered.

7. Any company formed previous to the passing of this Act may be registered under the provisions of this Act if a majority in number and value (a) of the shareholders in such company shall express their consent thereto in writing, and such consent, together with a memorial as hereinbefore provided, shall be lodged with the

Registrar of District Court nearest as aforesaid, and shall be Sect. 12. published in the Government Gazette and at least four times in one or more of the newspapers published and circulated in the district, and copies of such publication shall be forwarded to the said Registrar. And such Registrar shall thereupon, at a period not less than thirty days after the date of such first-named publication, proceed to register such company. Provided always that notwithstanding such registration any person having any claim or demand in respect of any contract, matter, or thing which shall have been made or happened before such registration shall have the same remedy as if such registration had not taken place.

(a) See note to s. 16 "No-liability Act," *supra*.

8. A copy of such memorial as hereinbefore mentioned purporting to be certified by the said Registrar of District Court, whose handwriting it shall not be necessary to prove, and sealed with the seal of such Court, shall be *prima facie* evidence of the due appointment of such manager and that the company has been duly registered under the provisions of this Act.

Proof of registration and of appointment of manager.

To make a company liable in action against its manager, proof must be given that the requirements of s. 6 have been complied with; no doubt this might be done in other ways, but the best proof is the production of the copy of the memorial, which is made evidence by s. 8. The admissions of the alleged manager are not sufficient; nor is the production of the copy of the memorial filed in the Supreme Court in accordance with s. 6 proof of the registration; (*semble*, unless it were a copy sealed in accordance with s. 8): *McNeil v Sandeman*, 12 S.C.R. 51.

9. Notwithstanding any change in the persons who may constitute any company, registered under the provisions of this Act, the persons who shall subsequently become members of such company shall be subject to the same liability only as if they had been members of such company at the time it was registered.

Change of persons not to alter liability.

10. Every company registered under this Act shall add to the style and title under which the business of such company is carried on the word "Limited."

Company to add "Limited."

11. (Registered office.) [*Repealed by 34 Vict. No. 16.*]

12. Notice of the removal of any such registered office, or of the substitution of any other person as manager of any company registered under this Act, shall be lodged with the Registrar of District Court wherein such company was originally registered,

Notice of removal or substitution to be registered.

Sect. 13. and such registrar shall thereupon proceed to record such removal or substitution.

Manager to keep a register of shareholders and shares.

13. The manager of every company registered under this Act shall keep or cause to be kept a book or books containing the names in full and residence of the shareholders (a), an account of the number of shares held by each of them, the said shareholders, and of the amount or amounts paid thereon, and every transfer of a share or portion of a share together with the name and residence of the transferee; and such book or books shall at all times be open free of charge for the inspection of creditors and shareholders; and if any manager shall neglect to keep such book or books or shall wilfully falsify any of the aforesaid particulars he shall be deemed to be guilty of a misdemeanour.

(a) But as to shareholders, see note to s. 4 of the "Amending Act," 34 Vict. No. 16, *infra*.

14. (Unpaid calls a debt.) [*Repealed by 34 Vict. No. 16.*]

Accounts to be periodically published.

15. The manager of every company registered under this Act shall make and publish in the Government Gazette in the months of January and July respectively in each year a full and correct account of the assets and liabilities of such company, and any manager who shall wilfully falsify such accounts shall be deemed to be guilty of a misdemeanour.

Company may be wound-up if unable to pay its debts.

16. Whenever any execution issued on a judgment, decree, or order in favour of any creditor in any action, suit, or other legal proceeding instituted by such creditor against any company registered under this Act is returned unsatisfied, either in whole or in part, by the person appointed to execute the same, or whenever any creditor, to whom such company is indebted in a sum exceeding fifty pounds then due, has served on the company a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same, to the satisfaction of the creditor, such company shall be deemed to be unable to pay its debts, and any such creditor as aforesaid may make application for winding-up the company to the Judge of District Court of the district wherein such company is registered.

But a company registered under these Acts may also be wound-up under the

"Companies Act" as an unregistered company within the meaning of s. 243 of that Act: *In re Grand United Mining Co. (Tarcutta)*, 6 N.S.W. W.N. 106; 10 N.S.W. L.R. Eq. 269, and see *In re Morning Star G.M. Co.*, 2 S.C.R. N.S. Eq. 14; see further the "Act to amend the law as to contributories on the winding-up of Mining Companies," 40 Vict. No. 3, *infra*. In the *Grand United Co.'s Case* (*supra*), Darley, C.J., in delivering the judgment of the Court, said that "when the 'Companies Act' passed, it was well known that the provisions for winding-up contained in the Act 24 Vict. No. 21, were, in fact, nugatory, it being found to be impracticable to wind-up such companies in the District Court." And since that Act was passed no alteration seems to have occurred in this respect; there is still no machinery provided by the District Court for winding-up these companies. In the same way, it may be observed, that although the "Companies Act" provides by ss. 145-150 for transferring the proceedings in winding-up under that Act to the District Court, yet in that case also the statute is practically useless, no provision having been made by rules or otherwise for conducting windings-up in that Court.

Sect. 20.

17. Any application for the winding-up of a company registered under this Act shall be by petition, and there shall be filed or lodged at the time when such petition is presented an affidavit verifying the same.

Application to
be by petition.

18. Upon the hearing of any petition as aforesaid the said Judge of District Court may dismiss such petition with or without costs to be paid by the petitioner, or he may make an order directing the company by a day to be named in such order to pay or secure payment to the petitioning creditor of all moneys that may be proved to be due to him, together with such costs as such Judge may direct; or the said Judge may, if he so thinks fit, on the hearing of such petition, make an order or decree for winding-up the company forthwith, or such other order as to such Judge shall appear to be just.

Hearing of
petition.

19. If, at the expiration of the time named in such order as aforesaid, such payment is not made or security given, the said Judge of District Court may thereupon make an order or decree for winding-up the company.

Order for wind-
ing-up company

20. It shall be lawful for a majority of the shareholders, being not less than two-thirds in number and value, in any such company, in general meeting assembled and called by fourteen days' notice advertised in some newspaper published in the district to pass special resolutions requiring the company to be wound-up under the provisions of this Act, and thereupon a petition signed by the shareholders concurring therein and verified as hereinbefore directed, may be presented by some

Company may
be wound-up by
consent of
majority of
shareholders.

Sect. 21. person who shall be appointed at such meeting to the Judge of District Court of the district wherein such company shall be registered, and the Judge may, if he so think fit, on the hearing of such petition make an order or decree for winding-up the company forthwith or such other order as to such Judge shall appear to be just.

Judge of District Court to receive proof of debts.

21. The said Judge of District Court shall have power to receive proof of debts and to examine witnesses, and shall proceed herein in the same manner or as near as may be as the Chief Commissioner of Insolvent Estates.

Official agent to be appointed.

22. When the Judge of District Court shall make any order or decree for winding-up any such company, he shall appoint a competent person to act as official agent therein, and such official agent shall have power to collect all debts and to sell or dispose of all the assets owing and belonging to such company, and to enforce payment by the shareholders of the amounts (if any) unpaid upon the shares held by them or any of them.

Distribution of assets.

23. All moneys collected by such official agent shall be distributed by him amongst the creditors of the company in proportion to their several claims, and if any balance shall remain after all the creditors shall have been paid in full of their just demands, then such balance shall be divided amongst the shareholders of the company in proportion to their respective shares therein. Provided that such official agent shall be entitled to retain for his own use and in payment for his services a sum equal to five pounds per centum upon the amount so collected by him.

24. (Liability of shareholders as contributories.) [*Repealed by 34 Vict. No. 16.*]

Agent to publish schedule.

25. At least one month before making such distribution, the official agent shall make and publish in the Government Gazette and in one or more newspapers published and circulating in the district wherein mining operations have been carried on by such company a schedule showing the assets and liabilities of the company, the amount of moneys collected by him, and the mode of distribution thereof, and any such official agent who shall knowingly and wilfully falsify such schedule shall be deemed to be guilty of a misdemeanour and shall be dealt with accordingly.

26. It shall be lawful for any company, registered under this Act, to issue preference shares within the limits of the company's nominal capital for the security of, and in payment of, rent for any machinery, or materials, or both, which shall be furnished by any person, whether a member of such company or otherwise, for the use and benefit of such company; and such preference shares shall be a first charge upon the profits and a first claim upon any effects of the company; and all machinery and materials furnished as aforesaid shall be registered with full particulars by the Registrar of District Court as the property of the person or persons furnishing the same; and the preference shares issued in that behalf shall take priority in the order of the date of issue. Provided always that no preference shares shall be issued without the consent in writing of a majority in number and value of the shareholders, and all such preference shares shall be subject to all debts and liabilities of the company at the date of the issuing of such preference shares as aforesaid.

Sect. 28.

Company may issue preference shares.

27. Any machinery or materials furnished and registered as aforesaid shall not be levied upon for any debt or liability of the company renting the same, but any machinery or materials or both which shall be upon the claim or be used by a company registered under this Act and not registered as aforesaid, may be levied upon and sold as though it were the property of the company.

Liability of machinery or materials furnished and registered.

28. Any company registered under this Act shall be empowered to mortgage or give lien upon any plant or machinery the property of such company. Provided always that every such mortgage or lien shall be subject to any and every debt and liability which shall have been incurred prior to and remain unpaid, at the time of the company contracting such mortgage or lien, but shall take priority of all liens given and debts and liabilities contracted subsequently thereto and provided further that all liens given as aforesaid shall be registered with full particulars by the Registrar of District Court.

Company may mortgage their own plant and machinery.

SCHEDULE.

I, the undersigned [*here insert manager's name*], hereby make application to register [*here insert the name of the company*] under the provisions of the "Mining Partnerships Limited Liability Act, 1861," and I do solemnly and

sincerely declare that the following statement is, to the best of my belief and knowledge, true in every particular, namely—

1. The name and style of the company is
2. The place of operations [*or intended operations as the case may be*] is at
3. The nominal capital of the company is pounds in shares of each
4. The amount already paid-up is
5. The name [*in full*] of the manager is
6. The office of the company is at
7. The names [*in full*] and several residences of the shareholders and the number of shares held by each at this date are as follows:—

[*Here insert complete list.*]

Witness to signature—
C.D.

(Signed)

A.B.,
Manager.

84 Vict. No. 16. *An Act to amend the Act 24 Vict. No. 21, intituled "An Act to limit the Liability of Mining Partnerships."*

[28 April, 1871.]

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales, in Parliament assembled, and by the authority of the same as follows:—

Extension of
"Mining Part-
nerships Act."

1. The Act twenty-fourth Victoria number twenty-one, hereinafter designated the principal Act, shall, in addition to the companies described in section one thereof, apply and extend to companies to be formed for the purpose of working coal, cannel coal, bituminous shales, or shales from which petroleum or naphtha can be extracted, or of quarrying granite, marble, or limestones for building or other purposes, or of obtaining any precious stones or gems by any mode or method mentioned in the said section.

Repeal of sec-
tions 2, 11, 14 and
24 of principal
Act.

2. And whereas doubts have arisen as to the true construction of the second, eleventh, fourteenth, and twenty-fourth sections of the principal Act, and it has been deemed advisable to repeal the same. Be it therefore enacted that the second, eleventh, fourteenth, and twenty-fourth sections of the principal Act be and the same are hereby repealed.

Limitation of
liability of
shareholders.

3. In the event of a company already formed or to be formed under the principal Act for the purposes therein or herein mentioned being wound-up, every shareholder shall be liable to contribute to the assets of the company to an amount sufficient

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for payment of the debts and liabilities of the company and the cost, charges, and the expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualification following (that is to say), no contribution shall be required from any shareholder exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a shareholder.

Sect. 4.

4. In any action or suit brought in the Supreme or in any District Court by any company formed or to be formed under the principal Act, for the purposes therein or herein mentioned, against any of its shareholders to recover any call or other moneys due from such shareholders in his character of shareholder, such action shall be brought in the name of the official manager, and it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a shareholder in the company and is indebted to the company in respect of a call made or other moneys due whereby an action or suit hath accrued to the company. Provided always that such call or other moneys shall be deemed to be a debt due from such shareholder to the company, and payment thereof may be enforced by and in the name of the manager before any two justices of the peace.

Actions against
members for
calls or other
moneys due.

But it must be proved that the person sued is a shareholder before the company is entitled to recover. Thus in *Davis v. Montefiore*, 12 S.O.R. 26, the defendant had attended a meeting for forming the C.H.C.M. Company, when he proposed and seconded resolutions, and was elected a director of the company, and as such his name was afterwards inserted in the deed of settlement, but he never executed the deed. The eleventh clause of the deed provided that "no person shall be considered a shareholder until he shall have executed the deed of settlement." The defendant acted as director, and received fees as such; and paid the allotment money and two calls on one thousand shares. In an action by the company, by their manager, to recover the amount of a third call, it was held that the defendant was not estopped by his conduct from denying his liability; and that he was not in fact liable, as he had not executed the deed. There is nothing in the Acts defining a shareholder; and the register of shareholders which must, under s. 13 of the principal Act, be kept by the manager, is not made, and, therefore, is not evidence that any one whose name appears on it is a shareholder (in the case cited *supra*, it does not appear whether a register was in fact kept, or whether the defendant's name appeared upon it).

It may not be always necessary, as in that case, that an alleged shareholder should sign a deed of settlement before he can be liable for calls; but whatever is necessary to be done, must be done before the shareholder can be so liable.

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Sect. 5.

Company to
have a regis-
tered office.

5. Every company, already formed or to be formed under the principal Act for the purposes therein or herein mentioned, shall have a registered office situate in this colony to which all communications and notices may be addressed, and service of any notice or of any writ, declaration, plaint, Judge's order, or other proceeding or process whatsoever in any action, suit, or proceeding at such office shall be deemed to be service upon the company or upon the registered manager thereof; and any company which shall carry on business without having such an office shall be liable to a penalty not exceeding five pounds for every day during which business shall be so carried on.

Construction.

6. This Act shall be construed with and form part of the principal Act.

40 Vict. No. 3. *An Act to amend the Law as to Contributories on the winding-up of Mining Companies.** [28 June, 1876.]

Preamble.

WHEREAS during the last few years a great number of companies have been formed for mining purposes, the shares in which were divided into paid-up or partly paid-up shares and contributing shares, and many of the said companies are now being wound-up under the "Companies Act" of 1874, by the provisions of which Act contributing shares only are liable in the first instance for the payment of the debts of such companies: And whereas in certain cases attempts are now and may hereafter be made, notwithstanding the payment of all such debts by the holders of contributing shares exclusively to compel the payment by them of the whole balance remaining unpaid on such shares in order ostensibly to adjust the rights of contributories amongst themselves, but in reality to divide the fund which would thereby be obtained amongst all shareholders in respect of paid-up and contributing shares alike: And whereas it has been decided in England that the term contributories includes in effect the holders of paid-up as well as contributing shares, so that persons,

37 Vict. No. 19,
ss. 126, 161, 167.

*Though this Act refers to a winding-up under the "Companies Act," it is printed here and not with the "Companies Act," because its operation is entirely confined to companies formed under the "Mining Partnerships Act, 1861."

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who have in most instances really contributed nothing to the expenses of the undertaking and nothing to the payment of creditors, would be enabled unjustly to compel a further payment by the actual contributories for the benefit exclusively of the holders of nominally paid-up shares. Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales, in Parliament assembled, and by the authority of the same as follows :—

1. In construing this Act the following terms shall be interpreted in accordance with the meanings hereby assigned to them :—

“ Paid-up shares ”—Shares in any company which are agreed to be taken or are considered as paid-up in respect of the whole nominal value of such shares.

“ Partly paid-up shares ”—Shares agreed to be taken or considered as paid-up in respect of part of such nominal value—the balance being either paid in money or agreed to be so paid.

“ Contributing shares ”—Shares the whole nominal value of which is agreed to be paid in money to the company.

Who to be deemed contributories (paid-up shares)

2. In the adjustment of the rights of contributories amongst themselves on the winding-up of any company under the aforesaid “ Companies Act,” no shareholder shall be deemed a contributory in respect of any paid-up share, as above defined, held by him, or be entitled to share in any surplus wholly or partially derived from calls made on the holders of partly paid-up shares and contributing shares, or any of them, except only with respect to so much of such surplus as shall have been derived from realised assets of the company and not from such calls.

3. In the adjustment of such rights the holders of partly paid-up shares shall be deemed contributories only in respect of calls made on their shares beyond the amount agreed to be considered paid-up, and shall to that extent but not further be entitled to share in any surplus derived from calls as aforesaid.

The like (partly paid-up shares).

4. This Act shall apply only to companies formed under the “ Mining Partnerships Act ” of 1861. And nothing herein shall prevent the distribution of any such surplus in a different manner

Certain companies and cases excepted.

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Sect. 5. from that provided by this Act, where a different mode of distribution of a surplus derived wholly or in part from calls is in express terms provided for in the articles of association of the company, or shall prevent the holder of any share, wholly or in part actually paid in advance, from sharing in the surplus in respect of every such payment.

As to ownership in the land.

5. When any land or mine shall have formed the consideration, or have been agreed or declared to be the equivalent or consideration for such paid-up shares or any of them, the holders of such shares shall in the winding-up of the company, and in the distribution of the assets thereof, be exclusively entitled to share in the proceeds of the sale of such land or mine, if sold, and shall exclusively, as between them and the contributories, be deemed the owners of the land or mine, if not sold, whether the same shall have been worked for mining purposes or not.

Y. G. ...

BANKING AND JOINT STOCK COMPANIES ACTS.

An Act to make good certain Contracts which have been or may be entered into by certain Banking and other Copartnerships. 3 Vict. No. 21.

[22 October, 1839.]

WHEREAS divers associations and copartnerships, consisting of more than six members or shareholders, have from time to time been formed for the purpose of being engaged in and carrying on the business of banking and divers other trades and dealings for gain and profit, and have accordingly for some time past been and now are engaged in carrying on the same by means of boards of directors, or managers, committees, or other officers acting on behalf of all the members or shareholders of, or persons otherwise interested in, such associations or copartnerships. And whereas divers spiritual persons have been and are members or shareholders of, or otherwise interested in, divers of such associations and copartnerships : And whereas doubts have arisen as to whether the holding of such shares or interests by such spiritual persons was contrary to law : And whereas it is expedient to quiet such doubts and to render legal and valid all contracts entered into by such associations or copartnerships or which may be entered into by them, although the same may now be void by reason of such spiritual persons being or having been such members or shareholders or otherwise interested as aforesaid :

Be it therefore declared and enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof and by the authority of the same : That no such association or copartnership already formed, or which may be formed at any future time, nor any contract either as between the members, partners, or shareholders composing such association or copartnership, for the purposes thereof, or as between such association or copartnership and other persons, heretofore entered into or which shall be hereafter entered into by any such association or copartnership already formed or hereafter to be

No association or copartnership already formed or which may be formed at any future time nor any contract either as between the members of such associations or copartnerships for the purposes thereof or as between such associations or copartnerships and other persons shall be illegal or void

by reason only
of any spiritual
person being a
member &c. of
the same.

formed shall be deemed or taken to be illegal or void, or to occasion any forfeiture whatsoever, by reason only of any spiritual person or persons whatever being or having been a member, partner, shareholder, manager, or director of, or otherwise interested in, the same, but all such associations and copartnerships shall have the same validity, and all such contracts shall and may be enforced in the same manner, to all intents and purposes, as if no such spiritual person had been or was a member, partner, shareholder, manager, or director of or interested in such association or copartnership.

The reasons which led to the passing of this statute may be gathered from the following passage from Grant's Law of Banking, 3rd ed., pp. 515, 516:—"The trade or business of banking was held to be within the 57 Geo. III. c. 99, which restrained spiritual persons from being occupied in any trade or dealings, so that, if a bill of exchange were endorsed to a banking copartnership, and they sued upon it by their public officer, to show that spiritual persons were partners and members of the company defeated the action, and barred the company from recovering the amount of the bill, inasmuch as the copartnership was in such case carried on in violation of the above statute." This was the decision in the case of *Hall v. Franklin*, 3 M. & W. 259; and in consequence the English statute 1 Vict. c. 10 was passed. The N.S.W. statute above printed follows (with some differences) the recitals and first section of the English statute.

6 Vict. No. 2. *An Act for further facilitating proceedings by and against all Banking and other Companies in the colony entitled to sue and be sued in the name of their Chairman, Secretary or other Officer.* [7 July, 1842.]

Preamble.

WHEREAS by certain Acts of the Governor and Council of New South Wales, divers banking and other companies in the said colony are respectively enabled to sue and be sued in the name of their chairman, secretary, or some other officer for that purpose particularly named, but in such Acts no provision is made to compel the said companies to fill up within a reasonable time any vacancy which may be caused by the death, resignation, or removal of such officer as aforesaid, and it is expedient that such vacancy should be filled up with as little delay as possible, in order to facilitate all subsequent proceedings against any of the said companies: Be it therefore enacted by His Excellency the Governor of New South Wales, with the advice of the Legislative

Recites that no provision has been made for certain officers in the event of death resignation or removal.

Council thereof : That from and after the passing of this Act all banking, trading, and other companies in the said colony which are now or hereafter may be by any Act of the said Governor and Council empowered to sue or be liable to be sued in the name of their chairman, secretary, treasurer, managing director, or in the name of any other person or officer for that purpose particularly named, shall, upon the death, resignation, removal, or retirement of any such chairman, secretary, treasurer, managing director, or such other person or officer as aforesaid, proceed with as little delay as possible to elect some other person in his stead ; and unless such election shall take place within one calendar month from the date of such death, resignation, or removal, then all the privileges of the said company, whose officer as aforesaid shall so have died, resigned, retired, or been removed as aforesaid, conferred upon them by any Act of the said Governor and Council, shall utterly cease and determine, and thenceforth it shall and may be lawful for any person or persons to commence and sustain an action against any individual shareholder, or against any number of shareholders in or belonging to any of the said companies so losing its privileges as aforesaid.

In the event of death resignation or removal of chairman secretary or other officer for like purposes substitute to be appointed within one calendar month

An Act to enable any Joint Stock Company to sue any of its own Members and to enable any Member of any such Joint Stock Company to sue any such Company and for other purposes.

[17 July, 1848.]

WHEREAS Acts have been passed by the Governor and Legislative Council of the Colony of New South Wales to enable the proprietors of joint stock banking and other companies carrying on business in the said colony to sue and be sued in the name of the president, chairman, manager, managing director, inspector, local director, treasurer, secretary, clerk, or other officer in such Acts respectively named or appointed for that purpose : And whereas it is expedient to extend the provisions of the said Acts : Be it enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative

A member of any company having a claim against the

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same may sue
the officer of the
said company
appointed to
sue and be sued
on its behalf ;

Council thereof, That any person now being, or having been, or who may hereafter be, a member, shareholder, or proprietor of shares in any joint stock company now established and carrying on business, or which may hereafter be established and carry on business in the said colony, may, at any time hereafter, in respect of any claim or demand which such person may have either solely or jointly with any other person against such company, or the funds or property thereof, commence or prosecute, either solely or jointly with any other person (as the case may require), any action, suit, or other proceeding at law or in equity or in insolvency against the officer appointed or to be appointed under the provisions of the Act which enables such company to sue and be sued in the name of an officer of the said company, and that

and such officer
of any company
may sue any
member thereof
against whom
such company
may have a
claim.

such officer may in his own name commence and prosecute any suit or other action, proceeding at law or in equity or in insolvency in the Supreme Court of New South Wales in any of its jurisdictions, or in any other Court of the said colony, against any person being or having been a member of such company either alone or jointly with any other person, against whom such company has or may have any demand whatsoever, and that every person being or having been a member, shareholder, or proprietor of shares in such company shall, either solely or jointly with any other person (as the case may require), be capable of proceeding against such company in the name of the appointed officer thereof, and be liable to be proceeded against by or for the benefit of the said company by such officer as aforesaid by such proceedings and with the same legal consequences as if such person had not been a member, shareholder, or proprietor of the said company, and that no action or suit shall in any wise be affected or defeated by reason of the plaintiffs or defendants or any of them respectively or any other person in whom any interest may be averred or who may be in anywise interested or concerned in any such action being or having been a member, shareholder, or proprietor of such company, and that all such actions, suits, and proceedings shall be conducted and have effect as if the same had been between strangers.

Claims or
demands
against a com-
pany on account

2. And be it enacted that no claim or demand which any member, shareholder, or proprietor of shares in such company

may have in respect of his share of the capital or joint stock thereof or of any dividends, interests, profits, or bonus payable or apportionable in respect of such share, shall be capable of being set-off either at law or in equity or in insolvency against any demand which such company may have against such member, shareholder, or proprietor, on account of any other matter or thing whatsoever, but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital or joint stock, or of any dividends, interests, profits, or bonus payable or apportionable in respect thereof.

Sect. 4.

of shares shall not be set off against claims on account of other matters which such company may have against any of its members.

3. And be it enacted, That if any person or persons being a member or members of any such company or of any corporation shall steal or embezzle any money, goods, effects, bills, notes, securities, or other property of or belonging to such company or corporation, or shall commit any larceny, embezzlement, fraud, forgery, crime, or offence against or with intent to injure or defraud such company or corporation, such member or members shall be liable to indictment, information, prosecution, or other necessary proceedings for any stealing, embezzlement, fraud, forgery, crime, or offence, and in all such indictments, informations, prosecutions, or other proceedings, it shall be lawful to state the money and goods, effects, bills, notes, securities, or other property of such company or corporation to be the money, goods, effects, bills, notes, securities, or other property of the officer of such company appointed to sue and be sued on its behalf or in the name of such corporation as the case may be; and any such person or persons may thereupon be lawfully convicted as if such person or persons had not been or was or were not a member or members, shareholder or shareholders, proprietor or proprietors, of any such company or corporation, any law, usage, or custom to the contrary notwithstanding.

A member of any company or corporation stealing or embezzling any of its property may be prosecuted in the name of the officer appointed to sue and be sued on its behalf.

4. And be it enacted, That in case the merits of any demand by or against any such company shall have been determined in any action or suit by or against the officer of the said company appointed as aforesaid, the proceedings in such action or suit may be pleaded in bar of any other action or suit by or against the said officer for the same demand.

Merits of any demand by or against any company determined in an action may be pleaded in bar of any other action for the same demand.

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Sect. 5.

All provisions of Acts enabling companies to sue and be sued in the name of an officer thereof to be applicable to suits under this Act.

Chairmen and officers of companies and shareholders competent witnesses.

5. And be it enacted, That all the provisions of any Act enabling any such company as aforesaid to sue and be sued in the name of an officer thereof relative to actions, suits, and proceedings commenced or prosecuted under the authority thereof, shall be applicable to actions, suits and proceedings to be commenced or prosecuted under the authority of this Act.

6. Provided always, and be it enacted, That in all actions, suits, petitions, or other proceedings in the Supreme Court of New South Wales in any of its jurisdictions or in any other Court of the said colony in which such officer shall be on behalf of any such company and under and by virtue of the said Acts and of this Act or either of them plaintiff or complainant, petitioner or defendant, it shall and may be lawful for any president, chairman, manager, managing director, inspector, local director, director, auditor, treasurer, secretary, clerk or other officer engaged in the executive duties of such company, or for any member, shareholder, or proprietor of such company to give evidence in such action, suit, petition, or other proceeding, notwithstanding the name of any such officer shall be used as plaintiff, complainant, petitioner, or defendant, and notwithstanding that any such president, chairman, manager, managing director, inspector, local director, director, auditor, treasurer, secretary, clerk, or other officer, member, proprietor, or shareholder as aforesaid shall or may be interested in the result of such action, suit, petition, or other proceeding as a shareholder or copartner of any such company.

Memorials to be recorded in the office of the Registrar-General instead of in the office of the Registrar of the Supreme Court.

7. And be it enacted, That every memorial of the name of the president, chairman, manager, managing director, inspector, local director, treasurer, secretary, clerk, or other officer required by any of the Acts hereinbefore mentioned or referred to to be recorded or registered in the Supreme Court of New South Wales, shall from and after the passing of this Act be recorded or registered in the office of the Registrar-General of the colony of New South Wales, and that such memorial so registered in pursuance of the provisions of any of the said Acts, or of this Act, upon proof made that such memorial has been signed with the handwriting of the person or persons whose signatures appear thereto, shall in all proceedings, civil or criminal, and in all cases whatever be received in evidence as proof of the appointment and

Effect of such registration.

JOINT STOCK COMPANIES ACT (11 VICT. No. 56). 348

authority of such president, chairman, manager, managing director, inspector, local director, treasurer, secretary, clerk, or other officer, in such memorial named, and that in any action to be brought by any such president, chairman, manager, managing director, inspector, local director, treasurer, secretary, clerk, or other officer, by virtue of the Acts hereinbefore mentioned or referred to, the plaintiff therein shall not be nonsuited nor shall a verdict be given against the plaintiff for want of proof of the record or registration of such memorial or memorials as hereinbefore is mentioned, but in case the defendant in any such action shall make it appear on such trial that no such memorial or memorials hath or have been recorded then a nonsuit shall be entered in such action.

BILLS OF COSTS.

NOTE.

[In preparing Bills of Costs, the business should be entered under the terms in which it is transacted, and at the head of each term the year should be placed.

The Bill of Costs should be copied on foolscap paper but written on one side only, with a broad margin, ruled for money columns on the left-hand side for taxation. The paper should be folded lengthwise. All necessary letters and attendances should be charged in their proper places, stating briefly the purport of each letter and the object and result of each attendance. The year should be placed at the top of each page. Dates are by no means to be put in the left-hand column, as they confuse the taxation and may be cast up amongst the deductions. They should be placed immediately within the margin.

Additions should be legible and in ink, and the totals of each sheet summarised. It is of great importance where attendances are charged or journeys taken to be very accurate in furnishing dates and the time occupied on attendances and journeys. In journeys, the distances should be stated and the actual expenditure accurately given.

In order to facilitate the taxation, papers and vouchers should be arranged in the order in which they are referred to in the Bill.

Solicitors bringing in Bills of Costs for taxation must, at the time of such taxation, produce briefs initialed by counsel, together with vouchers for payments made, otherwise the appointment will be adjourned or struck out.]

PETITIONER'S COSTS OF PETITION TO WIND-UP COMPANY.

Instructions for petition of A.B. to wind-up the above-mentioned company, from £1 to ...					£3	0	0
Drawing petition, folio ... , at per folio ...					0	1	6
Copy of any necessary papers for counsel to enable him to settle petition, at per folio ...					0	0	6
Attending counsel with same to settle ...							
Paid fee to him and clerk ...							

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Attending at Registrar-General's office, searching if this company registered, and found same was	...	...	...	£0	5	0
Paid search	...	...	...	...	...	...
Engrossing petition, folio	...	at per folio	...	...	0	0
Copy to serve on company, folio	...	at per folio	...	...	0	0
Attending to file petition	...	...	...	...	0	5
Paid fiat on and filing petition	...	...	...	...	0	8
Service of petition on company (<i>According to circumstances.</i>)	...	...	...	...	...	...
Instructions for affidavit of the petitioner, verifying petition, from	...	...	...	...	...	...
5s. to	...	...	...	...	1	0
Drawing same, folio	...	at per folio	...	...	0	1
Engrossing, at per folio	...	...	...	...	0	0
Marking each exhibit to affidavit	...	...	...	...	0	1
Attending deponent, reading over, and to be sworn, from 5s. to	...	...	...	...	0	10
Paid oath, each—town, 1s.; country	...	...	...	...	0	2
Marking exhibit, each	...	...	...	...	0	1
Paid filing	...	...	...	...	0	1
Preparing summons and copy to appoint Mr. provisional official	...	...	...	...	...	...
liquidator and attend for signature and to file	...	...	...	...	0	5
If over three folios, per folio	...	...	...	...	0	1
Paid	...	...	...	...	0	4
Copy for service	...	...	...	...	0	1
Or per folio	...	...	...	...	0	0
Service thereof upon solicitors, each	...	...	...	...	0	2
(Charge for affidavit in support.)	...	...	...	...	...	...
Attending summons, order made to appoint A.B. on his giving security, from 10s. to	...	...	...	...	1	0
(Without counsel) from £1 to	...	...	...	...	3	0
Drawing advertisement of presentation of petition for insertion in Government Gazette and other papers, at per folio	...	...	...	...	0	1
Copy at per folio, each	...	...	...	...	0	0
Attending to insert in Gazette	...	...	...	...	0	5
Paid	...	...	...	...	...	...
Attending to insert in other papers, each printer	...	...	...	...	0	5
Paid	...	...	...	...	...	...
Drawing affidavit of service of petition, folio	...	at per folio	...	...	0	1
Marking exhibit, each	...	...	...	...	0	1
Paid oath, each—town, 1s.; country	...	...	...	...	0	2
Paid exhibit, each	...	...	...	...	0	0
Attending to file	...	...	...	...	0	2
Paid filing	...	...	...	...	0	1
Paid for copy affidavit of	...	...	...	...	...	...
, filed in opposition to petition, folio	...	...	...	...	...	...
, at per folio	...	...	...	...	0	0
Perusing, at per folio	...	...	...	...	0	0
If agency, close copy at per folio	...	...	...	...	0	0
(Charge for any affidavits in reply, or otherwise.)	...	...	...	...	...	...
Drawing observations in support of petition, folio	...	at per folio	...	...	0	1
Copies thereof, at per folio	...	...	...	...	0	0
The like of the petition, folio	...	at per folio	...	...	0	0
The like of affidavits in support, folio	...	at per folio	...	...	0	0
The like of exhibits, at per folio each	...	...	...	...	0	0
Paid fee to Mr.	...	with the brief and clerk	...	...	...	...
Attending him (<i>according to fee</i>).	...	...	...	...	...	...
Paid consultation fee to him and clerk	...	...	...	...	...	...
Attending him (<i>according to fee</i>).	...	...	...	...	...	...
Attending consultation, from 7s. 6d. to	...	...	...	...	2	0
Attending Court when petition in list but not reached	...	...	...	...	0	15
The like when heard, from £1 to	...	...	...	...	3	0
Drawing order, per folio	...	...	...	...	0	1
Close copy order, folio	...	at per folio	...	...	0	0
Notice to settle, copy and service and paid	...	...	...	...	0	10
If more than one party, for each additional copy and service	...	...	...	...	0	3
Attending settling, from 7s. 6d. to	...	...	...	...	2	0

Paid for order	...	...	...	...	£20 10 6
Court fees	...	...	...	...	0 13 0
Entering, at per folio	...	...	...	...	0 0 6
Attendance	...	...	...	...	0 2 6
Paid Court fees	...	...	...	...	...
Copy for service	...	...	...	...	...
Attending for same	...	...	...	...	0 2 6
Drawing advertisement of order to wind-up for insertion in Gazette	...	...	...	...	...
and signing same, folio	...	...	...	...	0 1 6
Copy, at per folio	...	...	...	...	0 0 6
Attending at Government Printer's to get same inserted...	...	...	...	...	0 5 0
Paid for insertion in Gazette	...	...	...	...	...
Term fee	...	...	...	...	0 15 0
If agency, term fee and letters	...	...	...	...	1 1 0
Copy order to wind-up for chambers, folios	...	...	...	...	0 0 6
Summons to proceed thereon	...	...	...	...	0 10 6
Attending to get same signed and file copy	...	...	...	...	0 5 0
Copy for service, each	...	...	...	...	0 1 0
Service thereof, each	...	...	...	...	...
If served on more than one party, for every additional party served	...	...	...	...	0 5 0
Attending summons (with counsel), from 10s. to	...	...	...	...	1 0 0
" " (without counsel), from £1 to	...	...	...	...	3 0 0
Order as above	...	...	...	...	...
Drawing bill of costs and copy for the taxing officer, folio	...	...	...	...	...
folio	...	...	...	...	0 1 6
Appointment to tax, copy and service, and paid	...	...	...	...	0 10 6
Attending taxation, from 10s. to	...	...	...	...	3 0 0
Drawing certificate	...	...	...	...	0 5 0
Attending to leave same	...	...	...	...	0 5 0
Paid signing and filing	...	...	...	...	1 3 4
Attending to bespeak and for office copy, 5s.; paid for same, 3s.	...	...	...	...	0 8 0
Copy and service	...	...	...	...	0 7 6

RESPONDENT'S (THE COMPANY) COSTS OF PETITION TO WIND-UP COMPANY.

Instructions to defend petition, £1 to	...	...	...	...	£3 0 0
Perusing petition, at per folio	...	...	...	...	0 0 6
Paid for copy affidavit of Mr. , in support of summons to appoint	...	...	...	...	...
provisional liquidator, folio	...	...	...	...	0 0 6
Perusing, at per folio	...	...	...	...	0 0 6
If agency, close copy, at per folio	...	...	...	...	0 0 6
Attending summons, order made to appoint provisional liquidator	...	...	...	...	...
Mr. , upon security being given. (With counsel), 10s. to	...	...	...	...	1 0 0
(Without counsel), £1 to	...	...	...	...	3 0 0
Paid for copy affidavit of sureties, at per folio	...	...	...	...	0 0 6
Perusing, at per folio	...	...	...	...	0 0 6
If agency, close copy, at per folio	...	...	...	...	0 0 6
Paid for copy recognizance, at per folio	...	...	...	...	0 0 6
Or if guarantee society's bond taken—	...	...	...	...	...
Paid for copy bond and affidavit, at per folio	...	...	...	...	0 0 6
Perusing the affidavit, at per folio	...	...	...	...	0 0 6
If agency, close copy affidavit, at per folio	...	...	...	...	0 0 6
Attending the Master when the security was approved, and the	...	...	...	...	...
certificate of approval directed to issue, from 7s. 6d. to	...	...	...	...	2 0 0
Attending to bespeak certificate	...	...	...	...	0 5 0
And for office copy, at per folio	...	...	...	...	0 0 6
Close copy, at per folio	...	...	...	...	0 0 6
Attending to settle certificate, from 7s. 6d.	...	...	...	...	...

BILLS OF COSTS.

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Paid for copy affidavit of A.B., in support of petition, folio ... , at per folio ...	£0	0	6
Perusing, at per folio ...	0	0	6
If agency, close copy, at per folio ...	0	0	6
Instructions for affidavit of Mr. ... , in opposition to the petition, from 5s. to ...	1	0	0
<i>(Taxing officer may make such allowance as in his discretion he thinks fit.)</i>			
Drawing same, at per folio ...	0	0	6
Paid fee to Mr. ... , to settle, and clerk			
Attending him <i>(according to fee)</i> .			
Engrossing affidavit, at per folio ...	0	0	6
Marking exhibits, each ...	0	1	0
Attending deponent to be sworn ...	0	5	0
<i>(If the solicitor necessarily has to go a long distance this may be increased according to circumstances)</i>			
Paid oath, each ...	0	1	0
Paid exhibits, each ...	0	0	6
Attending to file ...	0	2	6
Paid filing ...	0	1	0
Notice of filing copy and service upon the solicitor for the petitioner <i>(Charge for any further affidavits either in support or opposition.)</i>	0	3	6
Drawing observations, folio ... , at per folio ...	0	1	6
Copies thereof, at per folio ...	0	0	6
Copies of petition, affidavits, and necessary documents to accompany brief, per sheet of 6 folios ...	0	3	6
Paid fee to Mr. ... , with brief and clerk			
Attending him <i>(according to fee)</i> .			
Paid consultation fee to him and clerk			
Attending him ...			
Attending consultation, from 7s. 6d. to ...	2	0	0
Attending Court, petition in paper, but not reached	0	15	0
The like when heard, £1 to ...	3	0	0
Close copy order, folio ... , at per folio ...	0	0	6
Attending to bespeak, and for copy order	0	5	0
Paid ...			
Attending settling, from 7s. 6d. to ...	2	0	0
Attending summons to proceed under order to wind-up, order made, from 7s. 6d. to ...	2	0	0
<i>(According to circumstances, charge for any evidence and attendance as before, when provisional liquidator appointed, until appointment completed.)</i>			
Drawing bill of costs and copy for Master, at per folio ...	0	1	6
Attending to file ...	0	2	6
Paid filing ...	0	2	0
Appointment to tax, copy and service	0	7	6
Paid ...	0	8	0
Attending taxing, from 10s. to ...	3	0	0
Term fee ...	0	15	0
If agency, term fee, and letters ...	1	1	0
Postages, carriage, and transmission of documents, &c. }	<i>According to circumstances.</i>		
If agency, agency correspondence }			

COSTS OF OFFICIAL LIQUIDATOR.

Attending Mr. ... , conferring upon his appointment as official liquidator, and on the steps to be taken for winding-up the company, and as to his providing security ...	£0	15	0
Instructions for affidavit of Mr. ... , of fitness of Mr. ... , official liquidator ...	0	5	0
Drawing same, at per folio ...	0	1	6

Attending deponent to read over and to be sworn, from 5s. to	...	20	10	0
Paid oath, each	...	0	1	0
Paid filing	...	0	1	0
Notice of filing copy and service	...	0	3	0
Attending adjourned summons to proceed, further evidence read, and the proposed security submitted, directions given that the draft recognizance be prepared and left in Master's office for approval, 10s. to	...	1	0	0
Without counsel, £1 to	...	3	0	0
Term fee	...	0	15	0
If agency, term fee and letters	...	1	1	0
Instructions for recognizance and bond of liquidator, 7s. 6d. to	...	1	0	0
Drawing same, folio, at per folio	...	0	1	6
Copy, at per folio	...	0	0	6
Engrossing, at per folio	...	0	0	8
Paid parchment, per skin	...			
Paid bond stamp	...	1	0	0
Attending appointment Master's office—Draft recognizance approved	...	0	10	0
Affidavit of surety, each—town, 1s.; country,	...	0	2	6
If guarantee society's security taken, affidavit of secretary of same	...			
Attending to procure execution of recognizance at Master's office	...	0	15	0
Paid on taking recognizance	...	0	5	0
Attending procuring execution of bond by two directors of guarantee society	...	0	15	0
Affidavit by secretary of proper execution according to rules of society (as before).	...			
Copy draft certificate that proposed liquidator had given security, folio, at per folio	...	0	0	6
Attending to settle	...	0	7	6
Paid for certificate	...	1	0	0
Attending to file	...	0	2	6
Paid filing	...	0	3	4
Attending filing and for office copy	...	0	5	0
Making copy order to wind-up for Registrar of Joint Stock Companies, at per folio	...	0	0	6
Paid company's registration stamp	...	0	5	0
Attending to lodge same with Registrar	...	0	7	6
Drawing advertisement of order appointing official liquidator and fair copy for signature	...	0	5	0
Paid signing	...	0	5	0
Making copies, for insertion in Gazette and papers, at per folio, each	...	0	0	6
Paid insertion in Gazette	...			
Attending to insert	...	0	5	0
Paid insertion in other papers	...			
Attending to insert, each paper	...	0	5	0
<i>(Charge for all attendances upon liquidator conferring upon list of contributories, creditors' claims, liquidator's accounts, balance due from contributories, and also upon all other parties, according to the circumstances.)</i>				
Making copy list of contributories as prepared by Mr. A.B., the official liquidator, folio, at per folio	...	0	0	6
Instructions for affidavit in support, from 5s. to	...	1	0	0
Drawing same, at per folio	...	0	0	6
Attending deponent to be sworn, 5s. to	...	0	10	0
Marking exhibit, each	...	0	1	0
Paid oath, each	...	0	1	0
Paid exhibit, each	...	0	0	6
Paid filing	...	0	1	0
Notice of filing and service	...	0	3	0
Drawing summons to settle list of contributories	...	0	5	0
Copy to file	...	0	1	0
Paid signing and filing	...	0	4	6

BILLS OF COSTS.

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Preparing and filling up notice to contributories , each	... £0	1	0
Service thereof upon contributories, each (<i>according to circumstances</i>)			
Preparing summons for leave to serve contributories living out of the jurisdiction	... ..	0	5 0
Copy to file	... ..	0	2 6
Paid signing and filing	... ..	0	4 6
[<i>Charge usual charges for affidavits in support, if required.</i>]	...		
Attending summons, order made (<i>as before</i>).			
Drawing order, at per folio	... ..	0	1 6
Attending at Master's office to get same initialed, and attending Judge for signature	... ..	0	7 6
Copy chamber order to file, at per folio	... ..	0	0 6
Attending filing	... ..	0	2 6
Paid	... ..	0	4 6
Copies for service, at per folio	... ..	0	0 6
Services thereof (<i>according to circumstances</i>)			
Drawing affidavit of service	} <i>as before.</i>		
Marking exhibits, each			
Paid oath, exhibit and filing			
Attending to settle list of contributories, 10s. to	... ..	1	0 0
(Without counsel) £1 to	... ..	3	0 0
Copy schedule with names of contributories for Master for his draft certificate, folio , at per folio	... ..	0	0 6
Copy certificate, settling list of contributories, folio , at per folio	... ..	0	0 6
Attending to settle, from	... ..	0	7 6
Paid for certificate	... ..	1	0 0
Attending to file	... ..	0	2 6
Paid filing	... ..	0	3 4
Attending to bespeak and for office copy	... ..	0	5 0
Paid	... ..		
Summons for a call of £ per share	... ..	0	5 0
Copy for Master	... ..	0	2 6
Attending to file	... ..	0	2 6
Copies for service, each	... ..		
Preparing or filling up notices to contributories, each	... ..	0	1 0
Services upon contributories, each	... ..		
(<i>Charge for affidavit in support.</i>)			
Attending summons, order made, from	... ..	6	7 6
(<i>Drawing, &c., order as before.</i>)	...		
Copies of the order for service, at per folio	... ..	0	0 6
Services thereof, and of the order upon contributories, each	...		
For preparing receipt of amount payable by contributories for the bank, and copy, and lodging same at bank, each	... ..		
For drawing notice to be served on contributories of a meeting, at per folio	... ..	0	1 6
Copy to serve, at per folio, each	... ..	0	0 6
Summons for order for payment of a call against contributories, viz., A.B., &c., at per folio	... ..	0	1 6
Copy to file	... ..	0	2 6
Paid signing and filing	... ..	0	4 6
Copies for service, each	... ..		
Services upon contributories, each	... ..		
(<i>Charge for affidavit of liquidator that amounts due from respective contributories and affidavit of service, as before.</i>)			
Attending summons, order made (<i>as before</i>).			
(<i>Drawing, &c., order as before.</i>)	... ..		
Copies of the order for service, at per folio	... ..	0	0 6
For preparing and filling up notices of the order for payment of a call, each	... ..	0	1 0
Service, each (<i>according to circumstances</i>)			
Mileage for each mile beyond two, each	... ..		
(<i>If writ of execution issued.</i>)			
Preparing writ of execution, including affidavit of demand, præcipe, &c.	2	5	0

<i>Paid Sheriff's charges ..</i>	...	...	...	2
<i>If a writ of sequestration is issued, charge accordingly.</i>	...	...	...	...
<i>If notice in bankruptcy given, charge</i>	...	...	...	...
Instructions for demand in bankruptcy against A.B., who had failed	...	...	...	...
to pay amount of call	...	...	...	0 7 6
Drawing notice and particulars of demand, folio	...	...	at per folio	0 0 6
Two fair copies, folio	...	...	at per folio, each	0 0 6
Attending signing	...	...	...	0 5 0
Service (according to circumstances.)	...	...	...	...
<i>If compromises effected, charge</i>	...	...	...	...
Paid for copy affidavit of debtor in support of proposal to compromise,	...	...	...	...
folio	...	...	at per folio	0 0 6
Perusing, at per folio	...	...	...	0 0 6
Attending official liquidator thereon, and arranging that he should	...	...	...	...
investigate the statements made	...	...	...	0 15 0
(Make usual charges for affidavit of official liquidator that he had	...	...	...	...
investigated the matter and in support of proposed compromise.)	...	...	...	...
Summons to approve of proposed compromise with A.B.	...	...	...	0 5 0
Copy to file	...	...	...	0 2 6
Attending filing	...	...	...	0 5 0
Paid	...	...	...	0 4 6
Attending summons, order made for approval of agreement for	...	...	...	...
compromise as proposed (as before).	...	...	...	...
Instructions for agreement accordingly, from 7s. 6d. to	...	...	...	1 0 0
Drawing same, at per folio	...	...	...	0 0 6
Copy, at per folio	...	...	...	0 0 6
Writing to debtor's solicitor, Mr.	...	...	therewith for approval	0 3 6
Attending the Master in Equity, obtaining his approval of the	...	...	...	...
agreement marked in the margin	...	...	...	0 7 6
Engrossing at per folio	...	...	...	0 0 6
Attending official liquidator to execute	...	...	...	0 7 6
Writing, making appointment to complete	...	...	...	0 3 6
Drawing order approving compromise on agreement and attending	...	...	...	...
for same and at Master's office to get same entered	...	...	...	...
<i>Charges relating to the Bank—</i>	...	...	...	...
Making copy order to wind-up for the Bank, if required, at per folio	...	...	...	0 0 6
The like of the order to appoint official liquidator, if required, at per	...	...	...	...
folio	...	...	...	0 0 6
Attendance to lodge same	...	...	...	0 5 0
For preparing receipt of amount payable by contributories for Bank	...	...	...	...
and copy and lodging same at Bank, each	...	...	...	...
Drawing request for certificate of balance at the Bank, and attending	...	...	...	...
official liquidator obtaining his signature thereto	...	...	...	0 7 6
Attending at Bank with request and obtaining certificate of balance	...	...	...	...
to the account of this matter	...	...	...	0 7 6
<i>Charges relating to creditors—</i>	...	...	...	...
Preparing advertisement for creditors, and attending at chambers to	...	...	...	...
obtain approval and signature of the Master in Equity	...	...	...	0 5 0
Paid signing	...	...	...	0 5 0
Copies for Gazette and other papers, together, folio	...	...	at per folio	0 0 6
Paid for insertion in Gazette	...	...	...	...
Attending to insert	...	...	...	0 5 0
(Paid for insertion in other papers.)	...	...	...	...
Attending to insert, each paper	...	...	...	0 5 0
Instructions for affidavit of Mr.	...	...	official liquidator, in support	...
of debts and claims, from 5s. to	...	...	...	1 0 0
(Usual charges for affidavits.)	...	...	...	...
Drawing list of claims admitted to be verified, at per folio	...	...	...	0 1 6
Copy for Master, at per folio	...	...	...	0 0 6
Paid for copy affidavit of Mr.	...	...	in support of his claim, at per folio	0 0 6
Perusing	...	...	...	0 0 6
Preparing and filling up notices to creditors that claims admitted,	...	...	...	...
copy and service, each	...	...	...	...

BILLS OF COSTS.

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The like to prove claim, copy and service, each	...	...	£
The like to attend and receive debts, each	...	...	
For drawing notice to be served on creditors of a meeting, at per folio	0	1	6
Copy to serve, each, at per folio	0	0	6
Making copy list of creditors for Master's certificate, at per folio	0	0	6
Copy certificate at per folio	0	0	6
Attending to settle certificate, from 7s. 6d. to	2	0	0
Paid for certificate	1	0	0
Attending to file	0	2	6
Paid filing	0	3	4
Attending to bespeak, and for office copy	0	5	0
Paid	...	...	...
Summons to pay a dividend to creditors, at per folio	0	1	6
Copy for Master, at per folio	0	0	6
Attending to file	0	5	0
Paid signing and filing	0	4	6
<i>(Usual charges for affidavits in support.)</i>			
Attending summons, order made (with counsel), from 10s. to	1	0	0
Drawing order, at per folio	0	1	6
Attending for same at Master's office to get same initialed	0	5	0
Attending Judge for signature	0	7	6
Engrossing copy to file	0	0	6
Attending to file	0	2	6
Paid	0	4	6
Preparing and filling up notice to creditors to attend official liquidator and receive £ dividends on debts, each	...	...	...
Services, each	...	...	...
<i>Charges relating to witnesses—</i>			
Preparing summons for A.B. to attend in chambers to be examined or cross-examined	0	5	0
Attending to get same signed	0	5	0
Paid	...	...	...
Copy for service	0	2	6
Service	0	5	0
Preparing subpoena and præcipe to file for attendance of A.B. and attendance to issue	0	12	0
Paid sealing...	...	...	...
Copy to serve and attending serving	...	...	...
<i>Cost of liquidator's account—</i>			
Copy account received from liquidator for use, at per folio	0	0	6
Summons to proceed on account, attending to issue same	0	7	6
Paid	0	3	0
Copy for service	0	8	0
Notice of appointment to official liquidator, copy and service	0	3	0
<i>Charge for usual affidavit verifying account.</i>			
Attending summons, account passed. Entering the liquidator's account in the two books, folio, at per folio, each	0	0	6
Instructions for affidavit of official liquidator. Verifying the account as entered in the books, 5s. to	0	10	0
Drawing same, at per folio	0	0	6
Marking exhibits, each	0	1	0
Attending deponent to be sworn	0	5	0
Paid oath, each	0	1	0
Paid exhibit, each	0	0	6
Paid filing	0	1	0
Drawing certificate approving the account, at per folio	0	0	6
Attending to settle, from	0	7	6
Paid for certificate	1	0	0
Attending to file	0	2	6
Paid	0	3	4
Attending to bespeak, and for office copy	0	5	0
Paid	...	...	...

<i>Charges for completely winding-up and dissolving company—</i>			
Summons for taxation of costs to include the costs by anticipation for liquidator to pass his final account, and to finally winding-up and dissolve the company, at per folio	...	£0	1 6
Copy to file—Attending to get same signed, and filing copy	...		
Paid	...	0	4 6
<i>(Usual charges for order.)</i>			
Drawing bill of costs and copy for Taxing Master, at per folio	...	0	1 6
Warrant to tax copy and service	...	0	7 6
Paid	...	0	3 0
Attending to tax, from 10s. to	...	3	0 0
Drawing certificate of taxation	...	0	5 0
Attending and leaving same for signature	...	0	2 6
Paid certificate	...	1	0 0
Attending to file	...	0	2 6
Paid	...	0	3 4
Attending to bespeak, and office copy	...	0	5 0
Paid	...		
Postages, carriage and transmission of documents, &c., according to circumstances	...		
<i>If agency, charge for special and extensive agency correspondence, according to circumstances</i>			
<i>By anticipation—</i>			
(Charge for passing liquidator's final account as above)	...		
Instructions to vacate liquidator's recognizance	...	0	7 6
Preparing summons for dissolution of the company, and to vacate recognizance and attending	...		
Copy to file, at per folio	...	0	0 6
Attending to get same signed, and to file copy	...	0	5 0
<i>(Charge for affidavit of official liquidator in support, if required.)</i>			
Attending summons, order made (with counsel), 10s. to	...	1	0 0
<i>(Drawing order, &c., as before.)</i>			
Drawing advertisement of dissolution of the company, and attending Master and obtaining his signature thereto	...	0	7 6
Paid signing	...	0	5 0
Copy for the Gazette, at per folio	...	0	3 6
Attending Gazette office to insert	...	0	5 0
Paid insertion	...		
Copy of the order to dissolve, at per folio	...	0	0 6
Attending the Registrar of Companies with order for registration, and leaving office copy, and subsequently for and obtaining original order	...	0	7 6
Paid fee	...		

BILL OF COSTS OF ALLEGED CONTRIBUTORY IN GETTING HIS NAME EXCLUDED FROM THE LIST.

Instructions to oppose the official liquidator's application to include the name of Mr. A.B. in the list of contributories, from 7s. 6d. to	£1	0	0
Preparing summons for discovery of documents against the official liquidator, and attending to issue, at per folio	...	0	1 6
Copy to file, at per folio	...	0	0 6
Attending filing	...	0	2 6
Paid	...	0	4 6
Attending summons for discovery when on the official liquidator undertaking to produce the company's books for inspection the same was adjourned generally	...	0	15 0
Writing the official liquidator with an appointment to call and inspect the books	...	0	3 6

Attending at the official liquidator's office, inspecting the books, and taking notes therefrom, from 7s. 6d. (<i>according to time</i>).			
Instructions for affidavit shewing grounds for excluding name from the list, from 5s. to	...	...	£1 0 0
Drawing same, per folio	...	...	0 1 6
Engrossing, per folio	...	...	0 0 6
Attending deponent, reading over, and to be sworn, 5s. to	...	...	0 10 0
Paid oath	...	...	0 1 0
Attending filing	...	...	0 2 6
Paid filing	...	...	0 1 0
<i>Paid marking office copy, per folio</i>			
Notice of filing copy and service on the official liquidator's solicitor	...	...	0 3 0
Attending to bespeak copy affidavit of official liquidator in reply	...	...	0 5 0
Paid	...	...	...
Perusing, per folio	...	...	0 0 6
Close copy, if agency case, per folio	...	...	0 0 6
Attending appointment to settle list of contributories, when the Master excluded A.B.'s name from the list, but at the official liquidator's request the matter was adjourned into Court, from 7s. 6d. to			
Drawing observations for counsel's use on the hearing in Court, per folio	...	...	0 1 6
Fair copy thereof, per folio	...	...	0 0 6
The like evidence, per folio	...	...	0 0 6
<i>(Add the usual charges for the fees paid to counsel and attendance on them, and at the consultations.)</i>			
Attending in Court when case heard and the Master's decision confirmed with costs, from £1 to			
Drawing order, per folio	...	...	0 1 6
Copy to leave with Master, per folio	...	...	0 0 6
Appointment to settle copy and service, and paid	...	...	0 10 6
Attending settling draft order, from 7s. 6d. to	...	...	2 0 0
Attending to pay fees	...	...	0 2 6
Paid	...	...	...
Attending for order	...	...	0 2 6
<i>(Add usual charges for preparing and taxing bill of costs.)</i>			

IN THE SUPREME COURT OF NEW SOUTH WALES. IN EQUITY.

REGULÆ GENERALES.

The 27th day of September, A.D. 1889.

In pursuance of the powers vested in us by the "Equity Act" of 1880, and of all other powers in that behalf enabling us, we do order as follows:—

1. All rules now in force for fixing the amount of fees and allowances to solicitors for any proceeding in Equity are hereby repealed.
2. The amount of fees and allowances to solicitors in reference to proceedings in Equity shall be those mentioned in the annexed scale.
3. These Rules shall come into operation on the 7th day of October, 1889, and shall apply to any proceedings commenced on or after that date.

SCALE REFERRED TO.

Instructions.		£	s.	d.	£	s.	d.
To sue or defend	...	From	0	7	6	to	1 0 0
For statement of claim, statement of defence, special case on petition	...	From	1	0	0	to	3 0 0
For replication or interrogatories	...	From	0	5	0	to	0 10 0

		£	s.	d.	£	s.	d.
For documents to be brought into Master's office, such as charges, discharges, or statement of facts	...	...	...	...	From	0	7 6 to 1 0 0
To amend any pleading	...	...	...	...	From	0	10 0 to 1 0 0
For affidavit	...	...	...	...	From	0	5 0 to 1 0 0
To appeal	...	...	...	...	From	0	10 0 to 1 0 0
For or in opposition to any motion to be made in Court	...	...	...	...	From	0	10 0 to 1 0 0
For or in opposition to any application in chambers	...	...	...	...	From	0	5 0 to 0 10 0
For brief on hearing of suit, such fee may be allowed as the taxing officer shall think fit, having regard to the number of witnesses whose proofs shall have been taken, the time occupied in making searches and in procuring evidence, and to all the circumstances of the case	...	...	...	...	...		...
For brief on motion, or on further consideration, or on appeal, or on examination of witnesses <i>de bene esse</i>	...	...	...	...	From	0	10 0 to 2 0 0
For brief on application in chambers	...	...	...	...	From	0	7 6 to 1 0 0

DRAWING PLEADINGS AND OTHER DOCUMENTS.

Statement of claim or statement of defence						1	0	0
Or per folio						0	1	6
Replication, interrogatories, demurrer, plea, special case, statement of facts, charge, discharge, petition, minutes, affidavit, order, accounts, statements, advertisement, summons in chambers, or pleading of any kind						0	5	0
Or per folio						0	1	8
Will, conveyance, or other deed, per folio	From	0	1	6	to	0	2	0
Briefs per sheet (including copy)						0	10	0
Or per folio						0	2	0
Bills of costs for taxation including copy for the taxing officer, per folio						0	1	6
Indorsement on statement of claim under 13th section of "Equity Act" of 1880						0	5	0
Indorsement of fiat on petition						0	8	0
Marking each exhibit to affidavit						0	1	0

COPIES.

Of statement of claim and all other documents where no other provision is made						0	1	0
Or per folio						0	0	6
If attested, per folio						0	0	8
Of briefs, per sheet of 6 folios						0	8	6
Engrossment on parchment of any will or deed, per folio						6	0	8
Of any documents for printer, per folio						0	0	6
For printing, the amount actually and properly paid to the printer								

PERUSALS.

Of statement of claim, statement of defence, and other pleading by the solicitors of the party to whom the same are delivered						0	7	6
Or per folio						0	0	6
Of special affidavits by the solicitor of the party against whom the same can be read—each affidavit, per folio						0	0	6
Of printed proof and revise, per folio						0	0	2

WRITS AND SUMMONSES.

Writ of subpoena <i>ad testificandum</i> or <i>duces tecum</i> including precept and attending to issue, but not including fees paid						0	12	6
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BILLS OF COSTS.

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	£	s.	d.
Writ of execution, including affidavit of demand, præcipe, attending to issue and attending lodging with Sheriff, and fees paid on issuing and lodging with Sheriff ...	2	5	0
All other writs, drawing, and engrossing, at per folio ...	0	2	0

SERVICES AND NOTICES.

Service of statement of claim, petition, order, or other document on a party personally ...	From 0	7	6 to 0	15	0
If served at a distance of more than two miles from the place of business of the solicitor serving the same, for each mile beyond such two miles therefrom ...	0	1	0		
Where, in consequence of the distance of the party to be served, it is proper to effect such service through a bailiff or agent, for correspondence in addition ...	0	7	6		
Where more than one attendance is necessary to effect service such further allowance may be made as the taxing officer shall think fit ...	.....				
Service of any statement of claim, statement of defence, replication, petition, or other similar document on the solicitor of the opposite party ...	0	5	0		
For preparing and serving on solicitor of opposite party, notice of appearance, of trial, or of hearing ...	0	5	0		
For preparing and serving notice to produce or notice to admit ...	0	7	6		
If special, or necessarily long, such allowance as the taxing officer shall think proper, not exceeding (including copy and service) per folio ...	0	2	0		
For preparing notice of motion ...	0	5	0		
Or per folio ...	0	1	6		
Copy for service ...	0	2	0		
Or per folio ...	0	0	6		
For service of notice of motion, summons in chambers, or appointment on solicitor of other party ...	0	2	6		
For preparing any necessary or proper notice not otherwise provided for, including copy and service on solicitor of other party ...	0	5	0		
Or at per folio ...	0	2	0		

ATTENDANCES.

To file statement of claim and have summons indorsed stamped	£	s.	d.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																														
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	£	s.	d.	£	s.	d.
If examination more than two miles from place of business of solicitor, then such additional allowance as the taxing officer may deem reasonable	...	...	...			
On deponent to read over and with him to be sworn to affidavit	...	...	...	From	0	5
By a solicitor or his clerk to be sworn to an affidavit	...	...	...	to	0	10
On a summons in chambers with counsel	...	...	...	0	5	0
If without counsel	...	...	...	From	0	10
To file Chief Clerk's and Taxing Master's certificates, or to get copy marked as an office copy	...	...	...	to	1	0
On counsel, with brief or other papers—	...	...	...	From	1	0
If counsel's fee one guinea	...	...	...	to	3	0
If more and under five guineas	...	...	...	0	5	0
If five guineas and under twenty guineas	...	...	...	to	0	7
If twenty guineas	...	...	...	6		
If more than twenty guineas	...	...	...	From	0	5
On consultation or conference with counsel	...	...	...	to	0	7
To enter or set down suit, special case, or appeal for hearing or trial	...	...	...	6		
In Court on hearing of motion, special case, petition, appeal, or any other hearing where no witnesses examined	...	...	...	From	0	7
To present petition for order of course and for order in Court on every suit or special motion when same in list and not heard	...	...	...	to	2	0
On hearing of any suit per day where witnesses examined	...	...	...	0	0	0
To hear judgment	...	...	...	From	5	0
Before Master or Chief Clerk on any appointment, settlement of minutes, or inquiry, or for any purpose whatsoever necessary in the progress of the suit or proceeding	...	...	...	to	7	0
On taxation of bill of costs	...	...	...	0	0	0
Unless the same shall necessarily occupy so much time that the taxing officer shall consider such amount inadequate, in which case he may allow such further fee as he shall think proper	...	...	...	From	0	7
To obtain or give undertaking to appear	...	...	...	to	10	0
At Gazette office or other newspaper with notice for insertion	...	...	...	3	0	0
On counsel to procure certificate that cause proper to be heard as a short cause	...	...	...	From	0	10
To procure signature of Judge to any order in chambers	...	...	...	to	0	7
To examine an abstract of title with deeds, per hour, in a cause or matter	...	...	...	6		
To produce deeds for such purpose, per hour	...	...	...	From	0	10
To obtain appointment to tax or other appointment necessarily signed by the Chief Clerk or other clerk in the office of the Master in Equity, and including drawing, copy, and service of any such appointment (but not including fees paid)	...	...	...	to	0	5
If served on more than one party, for every additional party	...	...	...	0	0	0
On printer, and instructing him	...	...	...	From	0	10
For examining the proof print at per folio	...	...	...	to	0	0
Attending to return proof	...	...	...	2	0	2
Examining revise	...	...	...	From	0	5
Attending to search cause list during each Term	...	...	...	to	1	0
				From	0	10
				to	2	0
				0	0	0

TERM FEES, LETTERS, &c.

Term fee, for every Term during which any proceeding shall be taken in the suit ...	£ s. d.	£ s. d.
And further, in country agency, suits for letters...		0 15 0
Where no proceeding in the cause or matter is taken which carries a Term fee, a charge for letters may be allowed if the circumstances require it ...		0 6 0
For letter before suit, and every necessary letter during the course of a suit ...	From 0 3 6 to 0 7 6	
For circular letters, after the first letter, for each letter ...		0 1 6
In addition to the above, an allowance is to be made for special letters, and for the necessary expense of postages, carriage, and transmission of documents ...		.....

ALLOWANCES TO TOWN WITNESSES.

Merchants, bankers, master mariners, and professional men, per diem ...	From 0 15 0 to 1 0 0
Tradesmen, auctioneers, accountants, and clerks, per diem ...	From 0 7 6 to 0 15 0
Artisans, journeymen, sailors, labourers, and the like, per diem ...	From 0 6 0 to 0 7 6

ALLOWANCE TO COUNTRY WITNESSES.

From four shillings to eight shillings per day, in addition to the above-mentioned allowances, and in addition to the sum reasonably paid for travelling expenses.

FREDK. M. DARLEY, O.J.
W. C. WINDEYER, J.
WM. OWEN, J.
GEO. HIBBERT DEFFELL, J.

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